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**The Police Reform Process in Kenya, 2008-2014: A Case Study of
Security Sector Reform in Societies Emerging From Crisis**

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Doctor of Philosophy**

**Division of Peace Studies
Faculty of Social Sciences and Humanities
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Abstract

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The Police Reform Process in Kenya, 2008-2014: A Case Study of Security Sector Reform in Societies Emerging From Crisis

Key words: Kenya, Police Reform, Security Sector Reform, Power-sharing, Grand-coalition, Transition, Agenda Setting, Devolution, Policing, Post-conflict security building

Security sector reform has in the recent past been a critical component of peace agreements in countries emerging from armed conflicts or political crisis. In Kenya, the Commission of Inquiry into the 2007/08 Post-Election Violence (CIPEV) established that Kenya's security sector, particularly the police, bore the greatest responsibility for the violence. Subsequently, the police emerged as one of the major institutions for reforms. 'How have security sector reforms, particularly police reforms, in Kenya developed since 2007 and how, and to what extent, have they been shaped by Kenya's wider political transitions and SSR process during this period?' The research aimed at investigating how the police reform process in Kenya has developed since 2007, and how the process has been shaped by Kenya's wider political transitions and security sector reform processes in general. Using mixed methods research, we found that despite some progress, there is wider public perception that the reforms are yet to address reform priorities at the national level and still fall short of expectations of ordinary Kenyans. We argue that political power-sharing after the 2007 post-election violence facilitated police reform, while at the same time frustrated its implementation especially in instances where reform seemed to dis-empower political elites.

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This PhD is not perfect. Everyone is absolved from deficiencies except me.

Dedications

My wife Carol and children; Daniella and Nelson,

You make life worth Living.

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List of Abbreviations

ACCORD	African Centre for the Constructive Resolution of Disputes
ACF	Advocacy Coalition Framework
AP	Administration Police
ASSN	African Security Sector Network
BICC	Bonn International Centre for Conversion
CAQDAS	Computer Aided Data Analysis system Software
CBOs	Community Based Organisations
CID	Criminal Investigation Department
CIGI	Centre for International Governance Innovation
CKRC	Constitution of Kenya Review Commission
CNDD-FDD	Conseil National Pour la Défense de la Démocratie– Forces pour la Défense de la Démocratie
CoE	The Committee of Experts on the Constitutional Review
CPSA	Canadian Political science Association
CREAW	Centre for Rights Education and Awareness
DfID	Department for International Development
DSIC	District Security and Intelligence Committee
ECK	Electoral Commission of Kenya
ECPR	European Consortium for Political Research
EE	Central and East European
EGF	The European Geopolitical Forum
FES	Friedrich Ebert Stiftung
Gema	Gikuyu,Embu,Meru,Akamba
GJLOS	Governance, Justice, Law and Order Sectors
GoK	Government of Kenya
GSU	General Service Unit
IAD	The Institutional and Analysis Development
IAU	Internal Affairs Unit
IAWG	Inter-Agency Working Group
IMLU	Independent Medico Legal Unit
INGO	International non-Governmental Organisations
IREC	Independent Review Commission(Kriegler Commission)

ISSAT	International Security Sector Advisory Team
KADU	Kenya African Democratic Union
KAF	Kenya Air Force
KANU	Kenya African National Union
KCLR	Kenya Council for Law Reporting
KCSE	Kenya Certificate of Secondary Education
KNDRP	Kenya National Dialogue and Reconciliation Process
KPF	Kenya Police Force
NARC	National Rainbow Coalition
NATO	Northern Atlantic Treaty Organisation
NCBDA	Nairobi Central Business Association
NCIC	National Commission on Integration and Cohesion Commission
NIS	National Intelligence Service
NSIS	National Security Intelligence Service
ODM	Orange Democratic Movement
OECD-DAC	Organisation for Economic Co-operation and Development's Development Assistance Committee
OSCE	Organization for Security and Cooperation in Europe
OTI	Office of Transition Initiatives(USAID)
PEV	Post-Election Violence
PNU	Party of National Unity
PRIC	Police Reform Implementation Committee
PRIO	Peace Research Institute Oslo
PRWG	Police Reforms Working Group
PSC	Public Service Commission
PVWG	Police Vetting Working Group
REGABU	Rendille, Gabra, and Burji
SDCP	Senior Deputy Commissioner of Police
SIPRI	Stockholm International Peace Research Institute
SLDF	Sabaot Land Defence Force
SPSS.	Statistical Package for Social Sciences
SSR	Security Sector Reform
SSRPs	Security Sector Reform Provisions

SWAP	Sector Wide Approach
TFDG	Task Force on Devolved Government
TNA	The National Alliance
UN	United Nations
UNODC	United Nations Office on Drug and Crime
URP	United Republican Party

CHAPTER ONE

INTRODUCTION

1.1 Research Background

The central aim of this study is to investigate security sector reform (SSR), particularly police reform, in transitional post-conflict societies. Specifically, it explores police reform in Kenya since 2007 in relation to the underlying processes, examines the contribution of local actors to the reform process and investigates the challenges and responses to deficiencies associated with SSR. It also explores the influence of power-sharing politics on Kenya's police reform process and investigates the extent to which the police reform that emerged after the 2007 post-election violence in Kenya is responsive to policing and security needs of the Kenyan population.

Kenya has undergone a series of political transitions from a single party state to a multi-party democracy. During the course of the transition, the security sector has evolved alongside the existing political landscape. However, political agenda setting for major changes in the security sector, specifically police reform became more pronounced with the victory of the National Rainbow Coalition (NARC) in the 2002 general elections. The NARC government inherited a security sector that was perceived to be characterized by inefficiency, lack of respect for human rights, people unfriendly and one whose culture was to support the regime in power (Hornsby, 2012)

In 2003, the new government, with the support of the donor community established the first ever Sector Wide Approach (SWAP) effort at reforming its governance, justice, law and order sectors (GoK, 2003) popularly known as GJLOS. Under this initiative, there was increased investment in reform within security agencies through capacity building, improvement in operational logistics and welfare of personnel. Community policing was also introduced to make provision of security responsive to

community needs (Groenewald and Peake, 2004). These reforms were however limited because the existing legislative and policy framework did not provide for institutional reforms within the security sector.

The 2007 general election was a turning point in Kenya's security reform initiative. The ensuing post-election violence exposed glaring weaknesses in Kenya's state security systems as the agencies failed to institutionally anticipate, prepare for and contain the violence, and in some cases contributed to violence and violations of human rights (Waki Commission, 2008). Observers for example, IISS (2009) and ICTJ-Kenya (2010) pointed to a plethora of issues responsible for the failure to institutionally respond to the violence. They argued that failure to embrace institutional reforms including judicial, police and civil service left the Kenyan state with reduced ability to tackle root causes of violence. Since then, no aspect of Kenya's security sector has been under scrutiny as much as the police.

The National Dialogue and Reconciliation Process (KNDRP) resulted in the National Accord. Agenda four of the process outlined priorities that the government needed to undertake in order to restore peace and stability in Kenya. Envisaged in these reforms were constitutional, legislative and institutional reforms, including reforms of the judiciary and the police (Abdullahi, 2011). The National Taskforce on Police Reforms was formed in May 2009. The Taskforce submitted its report to the government in November 2009 with about 200 recommendations divided into four broad areas namely: police accountability, professionalism, operational and administrative reforms, and institutional policy and legislative reforms (GoK, 2009).

Linking the Kenyan case to the global challenges facing SSR (Andersen, 2011, Nathan, 2004), this study posits that SSR in Kenya face some very difficult challenges due to multiplicity of factors. The study thus proceeds to investigate the processes, outcomes and weaknesses of police reforms adopted in Kenya within the broad framework of SSR.

1.2 Research Questions

Some existing literature on reforms in Kenya for example, Manby (2008), indicate that police reform in Kenya faces complex challenges making realization of its objectives difficult. This, coupled with lack of evidence that the process is responsive to policing and public security needs inform the overarching question in this study, thus: 'How have security sector reforms, particularly police reforms, in Kenya developed since 2007 and how, and to what extent, have they been shaped by Kenya's wider political transitions and SSR process during this period?'

To address the question, the thesis focuses on police reform within the wider SSR. This is informed by the fact that the police reform forms the thrust of SSR discourse in Kenya and that police are the most visible security actors amongst the Kenyan public. The study primarily examines the aims of and approach towards police reform that emerged after the 2007 electoral violence in Kenya, and critically examines the subsequent police reform processes in the context of wider political and security sector reform and disputes. On the basis of initial assessment, the analysis proceeds from a sceptical and critical perspective, and therefore focuses on understanding weaknesses and constraints at least as much as progress in police reform in Kenya.

From the overarching question, the following secondary questions were addressed in the thesis:

- i. What were the security sector reform priorities in Kenya before and after the 2007-2008 post-election violence?
- ii. What is the contribution of local actors to police reform and wider SSR processes in Kenya?
- iii. How have stakeholders responded to challenges and deficiencies of SSR in Kenya?
- iv. To what extent has power-sharing politics influenced police reform and wider SSR in Kenya?

- v. To what extent is SSR in Kenya responsive to policing and security needs of the Kenyan population?

1.3 A Brief Overview of Literature

This PhD thesis is built on three thematic literature areas,¹ namely: SSR processes in transitional and post-conflict societies; political aspects of police and SSR in transitional societies; and the efficacy of police and SSR in transitional post-conflict settings.

Under the first theme, the study used Kenya's police reform experience in contributing to the literature of SSR in the wider transitional and post-conflict contexts. It explored the contribution of the local actors to police and wider security sector reform processes which have been dominated by the donor-recipient framing. The challenges facing SSR processes in transitional and post-conflict contexts were also explored alongside efforts undertaken by stakeholders to address such deficiencies. These relate to the first three secondary research questions respectively.

Existing literature affirms the role of power-sharing as means to ending conflicts (Lijphart, 2008, Curtis, 2013) especially in Africa and underscores the challenges posed by power-sharing in post-conflict environments (Tull and Mehler, 2005, Stodiek, 2008). Similarly, the inclusion of security sector reform component in power-sharing agreements also continues to receive considerable attention (Hutchful, 2009, Chitiyo, 2009). However, very little literature explores the interrelationship between power-sharing and security sector reform. Noyes (2013) attempted to fill this gap, albeit inadequately. While he compares the Kenyan and Zimbabwe's experience, his analysis is only limited to the degree to which SSR was part of the power-sharing agreements in the two countries, thus failing to provide a deeper understanding of the dynamics of power-sharing arrangements. The fourth secondary research question of this thesis seeks to fill this gap.

¹ These three literature areas are elaborately discussed in Chapter 2.

While a lot of attention and resources continue to be devoted to SSR processes in transitional and post-conflict countries, some scholars see little tangible outcomes and argue that SSR initiatives are yet to cascade down to community level (Egnell and Haldén, 2009, Scheye and Peake, 2005). This thesis contributes to growing body of evidence to show the impacts of SSR initiative amongst the public, particularly in terms of responsiveness to policing and community safety needs. This relates to the fifth secondary research question.

Based on above literature areas, the thesis targets three academic audiences and security sector reform policy community. The research directly contributes to the debates amongst the academic community interested in police reform in Kenya which has become a focus after the 2007 post-election violence. Apart from Kenya, the research also contributes to academic debates amongst those interested in police reform and wider SSR in countries in political transition and those interested primarily in security sector aspects of political transition in transitional/developing countries. Finally, it contributes to the policy community by providing a framework in which future policies on post-conflict security sector reform might borrow from.

The thesis recognises the fact that existing literature does not out-rightly consider Kenya as a typical image of a post-conflict country. Nevertheless, the post-conflict framework has been accepted internally with many institutions (ICPC, 2011, ICTJ-Kenya, 2010) and many scholars working within it. For the purpose of this thesis, the post-conflict framework is adopted since Kenya has some elements and agendas, for example power-sharing, similar to typical post-conflict contexts².

² The post-conflict debate is revisited in Chapter 2.

1.4 Methodology

1.4.1 Case Study Approach

This research is a single case study approach that focuses on security sector reform process, specifically post 2007 police reform in Kenya. As pointed out by Denscombe (2010, p.55), a single case study ‘explores the key issues affecting those in a case study setting (e.g. problems or opportunities)’ in this case, exploring progress, as much as disputes and outcomes in the implementation of police reform process within the wider security sector reform processes in Kenya after the 2007 post-election violence.

While the focus is on police reform in Kenya, the holistic nature of analysis of security sector reform processes allows us to analyse the police reform processes within the context of the wider security sector reform processes. Thus, the single case study approach here may be referred to as holistic (Robson, 2011), in which a single case of police reform in Kenya remains at the level of the whole, rather than seek to analyse each of the different institutions of the security sector.

1.4.2 Mixed Methods

The single case study approach in this research ‘allows the researcher to use a variety of sources, a variety of data and a variety of research methods as part of the investigation’ (Denscombe, 2010, p.54). For this reason, it adopts a mixed methods design, also called multi-strategy design (Robson, 2011), combining both quantitative and qualitative methods.

Though mixed in approach, this research is more qualitative than quantitative, since ‘priority is given to the qualitative aspects of the study’ (Robson, 2011, p.165), that is, substantial data is collected using qualitative methods. In this respect, chapters three, four and five relied on qualitative data, while chapter six invariably combined both the qualitative and quantitative data, This choice is guided by what Bryman (2012,

p.632) calls priority and sequence decisions. A priority decision relates to 'how far is a qualitative or quantitative method the principal data gathering tool or do they have equal weight?', while sequence decision relates to 'which methods precedes which?'³ The choice of mixed methods approach was useful as it helped to comprehensively respond to the research questions.⁴

1.5 Sources of Data

For the purpose of comprehensive analysis, both secondary and primary data sources described below are used in this study.

1.5.1 Documentary sources

Secondary data is drawn from documentation (both official and unofficial) and other sources including newspaper articles, surveys and reports, working papers and news commentaries. Many established research organisations periodically undertake surveys to determine attitudes of the public towards police reform to determine whether the reform meets public expectations.⁵ This study uses such surveys as part of quantitative analysis.

More so, the Kenyan media and the civil society groups, both local and international, continue to take active role in police/SSR discourse in Kenya thus providing invaluable data source for secondary analysis. This research heavily borrows from reports from such groups.

1.5.2 Primary sources

The choice of primary data sources was based on the question, 'Who are the main actors in Kenya's police/SSR processes? Whilst multiple actors come into mind, five categories of actors were identified for analytical purposes. These included: police officers, members of parliament, civil

³ Sequence decision is explained in Section 1.8 of this chapter.

⁴ See Section 7.3.4

⁵ We however rely on IPSOS as the most leading public opinion poll agency in Kenya.

society representatives, public officers responsible for police and justice reform and members of the public.

Police officers were included deliberately as the thrust of Kenya's security sector reform discourse majorly revolves around the police and that their handling of the 2007 postelection violence aggravated the situation.⁶

Members of parliament, representing both sides during the lifespan of the coalition government, shed light on power-sharing and provided insights into the political aspects of Kenya's police and justice sector reform.

Civil society groups' representatives were important in providing information relating to oversight and ownership of SSR. This category of respondents included representatives of various civil society groups including; Usalama Reforms Forum, Kenya Police Reforms Working Group, PeaceNet, Communities Initiative Action Group Kenya and the International Centre for Policy and Conflict

Public officers responsible for both police and justice reform were critical for providing in-depth information not available in the public domain in relation to the implementation of the reform process within the police and the wider security sector.

Members of the public, who are the direct beneficiaries of improved policing and access to justice, provided information relating to the responsiveness of the reform to policing and public security needs at community level. This related to Chapter six of the thesis. Whilst we research acknowledged the diverse nature of the Kenyan public, the emphasis was not on the diversity but on the perception of the wider public on the police reform process. In this research, various terminologies, including; 'ordinary Kenyans', 'ordinary public', 'Kenyan citizen' and 'Kenyan population' are synonymously used to refer to the members of the public.

⁶ For police role in the 2007 post-election violence, see Waki Commission (2008).

1.6 Data Collection Methods

1.6.1 Secondary Data

Secondary data in this research focused on analysis of data drawn from secondary sources (explained in Section 1.5 above). As construed in this research, 'secondary analysis is the analysis of data by researchers who will probably not have been involved in the collection of those data' (Bryman, 2012, p.312).

The choice of secondary sources as a source of data lies in the inherent advantages it offers within the context of this research. Some of the advantages of secondary analysis informing this choice included the 'prospect for having access to good quality data for a tiny fraction of resources', and that it offered 'more time for data analysis' and 're-analysis which may offer new interpretations' (Bryman, 2012).

These advantages - analysed against the Kenyan situation - revealed that while little academic research had been done in relation to police reform during the period under consideration, the range of possibilities in terms of data analysis was enormous.

1.6.2 Primary Data

Unlike secondary analysis where the focus was on analysis of data relating to police and justice reform processes as collected by other persons and institutions, the responsibility to collect and analyse primary data in this case was with the researcher. Both qualitative and quantitative data collection methods of primary data collection applied in this research. Based on Bryman (2012), qualitative interviewing and the questionnaire methods were used respectively.

1.6.2.1. Qualitative Interviewing

Collection of qualitative data in this study revolves around qualitative interviewing. Qualitative interview as used here borrows from Bryman (2012) to highlight the difference with the structured interview associated

with the survey method. Two qualitative interview methods; individual interview, commonly one-to-one and face-to-face, and focus group method, which is interviews in group settings, were used. These are explained below:

1.6.2.1.1. Individual Interview Method

At the formative stages of the design of this research, exploratory interviews with stakeholders were conducted for the purpose of providing a better and a nuanced understanding of the issues around police and justice reform process in Kenya, and to determine what range of responses to expect during the actual fieldwork. This helped to clear uncertainties and doubts over what to collect given the fact that there is so much material, albeit non-academic, on police/SSR processes in Kenya. The exploratory interviews with stakeholders were therefore deemed as a step towards providing a focused direction of the research.

Once the research focus had been obtained through exploratory interviews, semi-structured interviews were conducted with target groups⁷ including; police officers, members of parliament and civil society representatives. This was with the view to collecting data relating to challenges in the implementation of police reform; local ownership of police reform, oversight of police and responsiveness of SSR to community security needs and political aspects of police reform respectively. Additionally, in-depth interviews with the managers of police and justice reform in Kenya were conducted to provide expert opinion and insights not available in the public domain (Robson, 2011).

1.6.2.1.2. Focus Group Method

Focus group interview is important in 'examining the ways in which people in conjunction with one another construe the general topics in which the researcher is interested' (Bryman, 2012, p.503), in this case an in-depth exploration of people's understanding of security and security sector

⁷ A justification for the inclusion of these groups is provided the Section 1.7 of this chapter.

reform at the community level in Kenya. It also provided an opportunity to countercheck the responses and give insights into data relating to awareness, perceptions and impact of police and justice reform collected through analysis of secondary sources and the questionnaire.

We conducted three focus group discussions with members of the public drawn from Kisumu. The first group (FGD1) comprised the youth given the fact that the youth were significantly involved in the 2007 post-election violence in the form of confrontation with the police. The second group (FGD2) involved community leaders, for the purpose of exploring the level of police community relationship at the local level. The third group (FGD3) involved women only for the purpose of introducing gender dimension in the study.

1.6.2.2. Questionnaire Method

The fifth secondary research question in this study sought to explore the extent to which police reform is responsive to policing and security needs of the Kenyan population at community level. To achieve this, a semi-structured a face-to-face questionnaire, alongside qualitative interviewing described above was used. The questionnaire method was used to determine the public's level of awareness of the on-going processes, their perceptions towards the progress made in police reform and the impact the processes have on their security.

A number of instruments used in assessing the impact of SSR on local communities including (OECD DAC, 2007) and ISSAT (2010) provided guidance on how to determine public perception towards security sector reforms, while studies for example, Vinck et al. (2008) and Smith-Höhn (2011) provided empirical examples of the use of SSR perceptions based questionnaire in Democratic Republic of Congo, and Liberia and Sierra Leone respectively. These instruments were modified to suit Kenya's situation in relation to the post-2007 police reform process.⁸

⁸ See Section 6.2 for elaboration.

1.7 Sampling Procedure

The case study approach and the complexity of involvement of multiple actors in the police and justice reform processes in Kenya made it extremely difficult to develop a sampling frame hence the choice of a non-probabilistic technique, in this case purposive sampling. This choice was guided by desire to reach an array of respondents as possible 'so that many different perspectives and ranges of activity are the focus of attention' (Bryman, 2012, p.416).

Two levels of purposive sampling, sampling of context and sampling of participants⁹, described by Bryman (2012, p.417) were applied in this research. The former refers to sites selected for the study; in this case Nairobi and Kisumu counties, while in the case of the latter, no a priori decisions were made regarding number of participants. Kisumu and Nairobi counties were selected for urban/rural contextual comparison of the on-going police and justice reform processes. The counties were deliberately selected due to the level police involvement in the 2007 postelection violence in the counties.

The choice not to make a priori decisions about the sample size was guided by Mason (2011) who argues that sample size in flexible designs is dictated by the social process under scrutiny. Considering the complex nature of police reform process and the multiplicity of the actors involved, it was not possible to obtain a representative sample. Additionally, the focus was on an in-depth understanding of the reform process. Bryman (2012) reinforces this arguing that in a sequential approach, the researcher starts with an initial sample and gradually adds to the sample as befits the research questions. Based on these two sources, a total of 144 participants (see Table 1 below) were purposefully selected for the study.

As guided by Bryman (2012) and Robson (2011), the key-informants, police officers, civil society organisations representatives and members of

⁹ See Chapter two for justification of the choice of context and participants.

parliament were specifically selected by the researcher based on the researcher's own judgement on their suitability in the study. Participants for focus group discussions and members of the public were however recruited by the researcher and a research assistant whose experience in research and networks in Kisumu provided access to such respondents.

Table 1: Distribution of respondents

Methods	Target Group		Number of participants
Qualitative method	Key Informants		9
	Police Officers		8
	Civil society representatives		7
	Members of Parliament		4
	Focus Group discussions	Youth	10
		Women	10
		Community leaders	10
Quantitative Method	Questionnaire respondents		86
	Total		144

1.8 Data Collection Process and Analysis

Data collection was done in two phases. Phase one involved secondary analysis and quantitative data collection, through administration of the questionnaire, while phase two was qualitative phase involving individual interviews and focus group interviews respectively. This approach is consistent with quantitative-qualitative sequence suggested by Bryman (2012) and sequential transformative design suggested by Robson (2011). In both cases, data collection at the qualitative phase provides insights into data collected during the first phase of data collection. Analysis of both qualitative and quantitative data was done using Nvivo and Statistical Package for Social Sciences (SPSS) computer software respectively. The procedure for quantitative analysis was mainly applicable to Chapter 6 and is described in Section 6.2.

Data from individual interviews and focus groups were analysed using Nvivo, which is a Computer-Assisted Qualitative Data Analysis Software (CAQDAS). As argued by Fielding and Lee (1998), qualitative researchers want tools that support analysis but leave the researcher firmly in charge. Nvivo was the most suitable for facilitating the analysis in this case for a

number of reasons; first, the researcher having attended two seminars on use of NVIVO gained sufficient knowledge to use the software in this research. Secondly, the advantages inherent in the software made it attractive. Its versatile nature allows for wide ranging data manipulation including the possibility of developing models describing the research project.¹⁰ It also has the capacity to provide an audit trail, for example decisions about how coding was done. Such a trail bolsters the transparency and integrity of this research.¹¹

The first phase of processing and analysis of primary qualitative data involved transcription of audio recorded interviews for uploading into Nvivo software. Since the duration of the focus group discussions was relatively long, the recordings were exported into Nvivo as audio files.

The second phase involved coding of themes that emerged from the transcripts and audio materials. The categorisation into codes took two forms; those that emerged from the respondents' statements and those that the researcher identified as significant to the focus of inquiry. Respondents' statements were conceptualised as their views and perceptions regarding the police reform process and were categorised according to predetermined themes. Themes generated by Nvivo did not substantially differ from those predetermined by the researcher and therefore were used to enrich the analysis and further develop insights into the police reform process. This allowed for the development of both descriptive and explanatory categories (Lincoln and Guba, 1985). These were then refined by exploring various relationships and integrating the codes into a coherent explanatory model.¹²

1.9 Outline of the Thesis

Chapter 1 aims to provide the base upon which this thesis is built. It provides background information related to this research. Specifically, it gives the introduction, explains the research background, research

¹⁰ See Figure 2: Post 2008 Police Implementation Process.

¹¹ See Appendix ix: Nvivo Project Summary Report.

¹² See Figure 2: Post 2008 Police Implementation Process.

questions and introduces the methodology employed in the research. The chapter is a critical foundation upon which the research is understood.

The objective of Chapter 2 is to provide an analysis of the existing literature related to the research question. It thus gives the framework upon which concepts in this research are understood, as well as providing the overall theoretical underpinning of the research. The chapter reviews the literature on SSR processes in transitional post-conflict environments in general and Kenya in particular and engages with the debates in the three literature areas for which the thesis draws and contributes knowledge. The trajectory of SSR in Kenya prior to the 2007/2008 post-election violence is also interrogated to provide a nuanced understanding of issues, priorities and challenges of police/SSR processes that emerged after the post electoral violence in Kenya. The chapter then concludes by providing a justification for the overall research strategy used in the thesis.

Chapter 3 aims to provide an understanding of the setting of the security sector reform agenda in the aftermath of the 2007/08 post-election violence in Kenya. An analysis of agenda setting theories are examined to establish the best framework for understanding how the post 2007 police reform agenda, within the wider security sector reform in Kenya was constructed. Using Kingdon's Multiple Streams Theory (Kingdon, 2002), the chapter provides an in-depth interrogation of how the police and justice reform agenda was constructed with the view to providing the basis of analysis of the implementation process. Key documents, for example the National Accord and the Constitution, providing the framework for police and justice reform in Kenya are examined for the purpose of exploring the disputes and challenges of reform.

Chapter 4 aims to present and analyse data in relation to security sector reform processes, particularly police reform process in Kenya. It examines police/SSR dynamics in Kenya in relation to the underlying processes, examines the contribution of local actors to the reform process and investigates the challenges and responses to deficiencies associated with SSR.

Chapter 5 aims at demonstrating the interrelationship between power-sharing politics and security sector reform in Kenya. It focuses on the theme of political aspects of police and SSR in transitional post-conflict by exploring the linkage between power-sharing politics and SSR, interrogating the extent to which, and how, the two are interrelated in Kenya since 2008.

Chapter 6 seeks to determine contributions of security sector reform to policing and community security needs. It explores the efficacy of Kenya's police reforms from the immediate 2007 post-election violence period to the present; in relation to police-community relations.

Chapter 7 presents the findings and conclusions in relation to the overall research questions, and also highlights the thesis' contribution to knowledge. It summarises the findings of chapters three, four, five and six against the reviewed literature in chapter two and connects these with the primary research question in chapter one.

CHAPTER TWO

SSR IN TRANSITIONAL POST-CONFLICT CONTEXTS

2.1 Introduction

This chapter examines the literature related to the research question and provides a justification for, and an elaboration of, the overall research strategy. The analysis takes a critical approach, beginning with an exposé of the existing debates and arguments in the literature areas for which this research draws and contributes knowledge. This is then followed by the identification of gaps in the arguments and subsequent statement of the researcher's entry point and position in the discourses. The chapter therefore focuses on the theoretical underpinnings of this research and provides justification for research approach and methods employed in this study. The chapter is divided into eight sections. The first section serves as the introduction to the chapter and provides an outline of the chapter. It gives a brief description of what each section entails.

The second section aims at providing conceptual clarity of the key concepts that define this research. This is necessary for the purpose of providing the structure in which the research question is situated. Thus, contested key concepts including; security, the security sector, security sector reform, transitional societies and the nature of post-conflict societies are clarified.

The third section examines literature on security sector reform in general, and police reform in particular in transitional developing countries. It addresses the nature of SSR and in particular the police reform context. The section argues that whilst multiple reform contexts characterise security sector reform, post-conflict situations seem dominant in existing literature, yet evidence indicates the security sector reform is also undertaken by stable countries on an on-going basis. The section also discusses some critique of the security sector reform debates.

The fourth section presents and discusses existing literature on strategic and operationalisation challenges facing successful implementation of SSR, particularly police and justice reform in transitional societies. It focuses on the factors relating to the drivers and challenges for achieving progress on security sector reform, as well as lessons learned from different security sector reform contexts.

The fifth section provides the bulk of literature around which the study revolves. It presents the priorities and processes of implementing SSR in post-conflict countries; the politics of SSR including political transitions and power-sharing; justice reform in transitional post-conflict societies, ethnic dimension of police reform and peace processes and political power-sharing in multi-ethnic contexts.

Section six presents the state of security and security sector in Kenya, particularly in the run-up to the general elections of 2007 in the country. It assesses Kenya's case within the context of reviewed literature in the previous sections of this chapter and sets the stage for the arguments in Chapter 3. The section gives a trajectory of reform initiatives up to the time period 2007/2008 during the post-election violence.

Section seven elaborates a justification of the overall research strategy. It substantiates the research strategy employed, and explains the underlying paradigm of inquiry and the theoretical framework as much as specific methodological issues.

2.2 Conceptual Issues

This research relates to SSR, and in particular police reform, in developing transitional and post-conflict societies. However, the concepts security, security sector reform, post-conflict situations and transitional countries, forming the core of this thesis still remain contested. Arguments relating to these concepts are as diverse as there are scholars and institutional actors in these areas. Some of these arguments are presented below.

2.2.1 Problematising Security

The post-Cold War period has witnessed significant debates on security. It means different things to different people (Luckham, 2009). These debates stem from three roots: discontent with neorealist foundations that have characterised the field, the need to respond to post-Cold War security order and the desire to be relevant to contemporary concerns (Krause and Williams, 1996).

The understanding of security has undergone 'deepening and broadening' (Bellamy, 2003, p.104). Discussions intended to deepen the security agenda seek to either bring down the understanding of security to the level of the individual or human security or up to the level of international or global security (Buzan, 1991, Krause and Williams, 1996). Attempts to broaden the neorealist understanding of security seek to expand the concept to include a wider range of issues including; economic, environmental, human rights issues and migration (Krause and Williams, 1996). Buzan (2007) refers to these issues as dimensions which include; military, political, societal, economic and environmental dimensions of security. These discussions argue that the neorealist approaches, with the state as the referent object of security, have failed to provide answers to security problems, including failure to predict the end of Cold War and account for other security challenges including intra state conflict.

Deepening and broadening of security however attracts resistance from proponents of neorealist perspectives. These proponents argue that broadening security away from traditional focus could make the field practically irrelevant (Krause and Williams, 1996). For this reason they argue that 'it is important to guard against the temptation to make the concept of security so broad that it comes to mean all things to all people because this is certain to render the concept analytically useless' (Ayoob, 1997, p.125). Others prefer to retain the state-centric approach while at the same time advocating for multilateral forms of interstate security cooperation using terminologies as common, cooperative, collective and comprehensive as modifiers to 'security' (Krause and Williams, 1996).

The debate on the new thinking on security is critical to SSR and police reform for a number of reasons. It recognises; the fact that the safety of citizens ranks in as much as the defence of the state, gives greater emphasis on the role of civilian actors in the security policy of the country and acknowledges police reform and SSR as part of the broader strategies and initiatives for achieving security objectives (Hänggi and Scherrer, 2010, p.33, Chadwick, 2012, p.19). For analytical purposes, this thesis does not guard against multiple understanding of security. Rather, it recognises that for the purpose of an in-depth understanding of Kenya's police reform under the wider security sector reform, combining neorealist perspectives, with the state as the referent object of security and a more constructionist deepeners and wideners approach, that focusses on communities, provide the best platform for analyzing what is happening in Kenya.

2.2.2 The Security Sector

Understanding who provides security and justice is central to security sector reform (IDS, 2012). Thus, what constitutes the security sector is the point of departure in conceptualising security sector reform. Scholars and institutional actors alike adopt different perspectives in approaching the security sector. Hänggi (2004) for example approaches security sector from both security and governance perspectives. He argues that security sector may be conceptualised in narrow or broad terms. From the security perspective, the security sector comprises all those state institutions legally mandated to ensure safety of the state and its citizens. This is a state-centric approach and includes the armed forces, the police, paramilitary forces, the intelligence and secret services, border and customs guards as well as judicial and penal institutions. Where non-state actors are involved in provision of security, security sector is viewed from its broad dimension to include actors such as guerrilla and liberation armies, non-state paramilitary organisations as well as private military and security companies. Thus, the security sector from a broad perspective would include statutory and non-statutory security forces.

In terms of governance, the narrow focus of the security sector remains the control of those institutions with the exclusive monopoly of legitimate instruments of coercive power, which reflects a common feature of the modern developed nation-state. This includes the civilian authorities involved in the management and control of the security forces as well as the defence and internal ministries and parliamentary committees. Given the complexity of emerging security challenges and an increasing interest in the management and control of security, justice and law enforcement institutions, civil society groups have as well become important segments of the security sector in broad terms. For analytical purposes, all these may not be investigated in a single study. Whilst this PhD acknowledges a broad understanding of the security sector, its focus is on those institutions that are legally mandated in the provision of security.

Beyond the conceptualisation of the security sector at the national level, security challenges transcend the national borders, thus making conceptualisation of the security sector within defined borders limiting. It is thus reasonable to think of security sector from sub-regional, regional and trans-regional security sectors. This is currently manifest through the workings of respective state and regional security sector actors and transnational non-state actors such as international non-governmental organisations (INGO) and transnational private security forces. Hänggi (2004) summarises various interpretations as indicated in Table 2 below.

Table 2: Interpretations of 'Security Sector'

Perspective	A ¹³	B ¹⁴	C ¹⁵	D ¹⁶	Focus
Narrow	Security forces	Groups with a mandate to wield instruments of violence	Core security actors	Organisations authorised to use force	State-centric
	Civilian management and oversight bodies	Institutions with a role in managing and monitoring	Security management and Oversight bodies	Civil management and oversight bodies	
Broader		Judiciary, penal system, human rights ombudsmen	Justice and law enforcement institutions	Justice and law enforcement institutions	Human centric
			Non-statutory security forces	Non-statutory security forces	
				Non-statutory civil society groups	

Adapted from Hänggi (2004)

On his part, Williams (2000) offers three possible approaches to the security sector especially within the African context. These include; the maximalist approach, the minimalist approach and the pragmatic approach. The first approach includes all institutions, both statutory and non-statutory, that have the provision of security as their focus within the human security paradigm. This category would include all the security forces, government departments providing social services and non-state actors such as guerrilla forces and paramilitary organisations attached to particular political parties. Minimalist approach sees the security sector as being composed of those statutory forces that have traditionally possessed the responsibility for ensuring the physical security of the state — the armed forces, the police, paramilitary organisations and, where they exist, militia organisations, while the pragmatic approach considers the security sector as being constituted out of the traditional statutory instruments of state-centred security. It also includes such institutions as guerrilla forces and indigenous organisations that have played a positive role in contributing to the physical security of communities.

The conceptualisations of the security sector above reflect the new thinking about security explained in Section 2.2.1. Security cannot only be

¹³ Greene (2003, p.2).

¹⁴ Hendrickson (1999, p.29).

¹⁵ Hendrickson & Karkoszka (2002, p.179).

¹⁶ Edmunds (2002, p.3-4).

limited to the state. It has permeated health, environment and development communities to mention a few. In the words of Luckham (2009), from the point of view of development community, security issues are far too important to be left to security specialists alone (Luckham, 2009, p.2). He argues that for development to take place, political stability is important and that when states fracture or fail, the first priority is ending political violence and restoring minimum conditions of security.

The plural nature of understanding security thus posits a challenge to this study. Should we limit ourselves to the state as the referent object of security, and if yes how does the study locate within the constructionist approaches that seek to deepen and widen security and by extension the security sector? Against the above backdrop, this study adopts a broad approach in its conceptualisation of the security sector. This approach is consistent with Williams (2000) pragmatic approach. The thesis considers the interactions of the different actors involved in the shaping of security environment, thus focuses on the police reform within the broader SSR agenda in Kenya.

2.2.3 Security Sector Reform

Since the emergence of SSR concept in the 1990's, scholars and practitioners alike have engaged in lots of work with view to shedding light on the concept. For almost a decade and a half, it is still considered relatively new (Kurtenbach and Wulf, 2012) and still remains debatable. Ambiguities arise due to multiple interpretations advanced by scholars and policy institutions dealing with the reform of the security sector. This multiple interpretations of what security sector entails stems from the fact that the understanding of security and by extension the security sector is understood from different points of view.

While differences exist in the understanding of SSR, consensus abounds to the effect that SSR involves a raft of issues and activities related to reforms of the public sector charged with the responsibility of providing internal and external security (Hänggi, 2004), though these are often

characterised by differences in scope and depth. Some of the influential agencies that have shaped the course of SSR debates include UK government, the United Nations and the OECD-DAC.¹⁷

The UK government views SSR as concerned with security related policy, legislation, structural and oversight issues, all set within democratic norms and principles (DfID, 2002). The United Nations Security Council believes SSR is critical to the consolidation of peace and stability. It emphasizes that establishing effective, professional and accountable security sectors is the cornerstone of peace and sustainable development (UNSC, 2011).

Evolving from the DfID/UK framing, OECD DAC (2007) provides a more robust view as security system reform, describing it as the transformation of the security system, including all the actors, their roles, responsibilities and actions, working together to manage and operate the system in consistence with the democratic norms and principles of good governance that contributes to a well-functioning security framework. Whatever the definition, SSR seeks to make provision of security more effective and efficient under democratic control.

What constitutes SSR thus suggests a complex process whose investigation equally becomes complex. The very nature of SSR has meant that most studies have focused on effective provision of security as the ultimate aim of SSR. In police reform context, this has meant making service delivery of the police effective and accountable under the democratic oversight. As argued by Luckham and Kirk (2013), these studies tend to tell the story of reform and political obstacles to reform from the viewpoint of reformers themselves rather than end users. This study fills this gap. We assess police reform from multifaceted points of view; that of both the providers of security and the public who are the end-users and are supposed to benefit from police reform in Kenya.

¹⁷ The role played by these agencies in shaping SSR discourse is elaborately discussed in Section 2.3.

2.2.4 Transitional Societies

An analysis of transitional countries is critical to the understanding of the security sector reform processes of countries in transition. This is significant for two reasons. First, countries in transition consciously reform security institutions (Caparini and Marenin, 2004, EGF, 2013) and secondly, debates on the security sector reform directly link to wider political transitions.

Literature on countries in transition offer varied types of transitions and legacies. These range from; from war to peace (Colletta et al., 1996, Francis, 2014); authoritarianism rule to democracy (O'Donnell et al., 1986), military to civilian rule (Cawthra and Luckham, 2003) single party regimes to multi-party politics (Amutabi, 2009); from economic crisis to revitalisation (Mercer-Blackman and Unigovskaya, 2004), socialism to capitalism (Bezemer, 2006) and from economic crisis to economic liberalism (de Melo et al., 2001). For Francis (2012), transition societies are those that face one or more of the 'triple transition'¹⁸ challenges and they could be conflict-prone, war-torn and post-conflict war communities.

The scholarly work cited above account for the complex process of transition involving the interplay of both the structural pressures and other agents such as independent social groups and moderates to force change. According to Bratton (1994), these changes proceed in three transition stages, namely: pre-transition; liberalisation, political transition and consolidation respectively.¹⁹ Bratton's conceptualisation however is not impeccable. It suggests that transition is a unidirectional process with the end-state being democracy. It assumes, in the words of Caparini and Marenin (2004), that democracy is 'the stated goal and end-state that societies in transition or development are struggling toward'. This argument seems to preclude cases of regimes characterised with stability yet remain authoritarian.

¹⁸ See Francis (2012, p.9).

¹⁹ For a thorough description of the processes at the stages see; Bratton (1994, p.10-11).

Structural pressures such as socioeconomic development, economic crisis and favourable international environment are considered as drivers of democratisation (Hawkins, 2001). However, evidence exists to the effect that even when these pressures exist, they may not necessarily produce transition but entrench authoritarianism, with the security sector actors, including the police, being used as agents of repression. In other cases hybrid form of authoritarianism and democracy emerge for example in Cambodia and Central America (Richmond, 2012). In analysing (non)transition in Cuba in the year 1991, Darren Hawkins argued that 'these pressures, even when they collectively act, are not sufficient to produce change' (Hawkins, 2001, p.441), while Escribà-Folch (2012) provided evidence using cases of Togo and Chile as countries that failed to undergo transitions despite the international community imposing sanctions. Zimbabwe under President Mugabe may also be included amongst countries whose transition is in doubt even in the face of international pressures in the recent times.

What might cause 'non-transition' in such circumstances? One plausible reason is the fact that modern democratic transition arguments were 'developed with authoritarian regimes in mind' (Hawkins, 2001) and so fail to explain non-transition in totalitarian regimes such as Cuba under Fidel Castro. This position is reiterated by EGF (2013, p.1) that Western understanding of transition 'had been largely influenced by authoritarian transitions in Latin America and Southern Europe since the 1960s' thus complicating the understanding of transitions in newly independent states, like Ukraine and South Sudan, that still grapple with not only political and economic reform simultaneously but also building institutions and a state while forging a unified nation-state.

Even where countries have conducted democratic elections, periods of disorder still exist suggesting the infinite nature transitions. To address this challenge, cases of non-transitions need be considered alongside successful transitions. Literature on societies in transition heavily relies on democratic transition as a normative element of transition process. This is in line with the normative claim of 'civil-democratic oversight and control'

(Friedrich, 2004) in the SSR processes. This justifies casting our analysis under democratic transition paradigm. However, the problem with this approach is the burden to clarify the contextual and value laden the terms “authoritarian rule’ and ‘democracy’ which are laden with evaluative and context-dependent connotations;’ (Friedrich, 2004). Thus, casting this research strictly within the democratic framework, in the face of conceptual difficulties associated with democracy, would not allow for an in-depth exploration of what is happening in Kenya.

2.2.5 The Nature of ‘Post-Conflict’ Societies

Divergent postures assumed by scholars in the understanding of post-conflict societies suggest lack of shared understanding of the concept ‘post-conflict’. The prominence of the term, in both academic and policy circles, has seen it acquire a life of its own, with its associated concepts such as peacebuilding, statebuilding, reconstruction, recovery and security sector reform amongst others attracting lots of attention.

Some scholars, for example, Smith-Höhn (2011), Kurtenbach and Wulf (2012) and Reisinger (2009) extensively explore the concept before positioning their arguments within the wider post-conflict settings. Smith-Höhn (2011) for example explores the rebuilding the security sector in post-conflict Sierra Leone and Liberia, while Kurtenbach and Wulf (2012) address violence and security concerns in post-conflict settings. Reisinger (2009), in providing a framework for the analysis of post-conflict situations, particularly takes issue with the liberal template conceptualisation of post-conflict situations merely as a transition paradigm²⁰ with an endpoint in state-building. Her critique of the transition paradigm seems to converge with Caparini and Marenin (2004) critique of democratisation process as a linear process. She argues this is simplistic and fails to appreciate the complex dynamics unfolding between different actors engaged in a post-conflict environment.

²⁰ The view that post-conflict situations are processes of transition from war-torn situation towards consolidated statehood.

On the contrary, while writing about post-conflict settings, some scholars focus more on the associated concepts such as reconstruction and peacebuilding. Hamre and Sullivan (2002) and Tschirgi (2004) for example give emphasis of the associated concepts of reconstruction and peacebuilding respectively within the context of post-conflict settings. While such studies may provide thorough analysis of the associated concepts, they are feeble in providing the analytical lenses that form the base of their studies.

The overriding theme suggested in the above studies, whether explicitly or implicitly, is that post-conflict refers to the situation when a war or violent conflict has ended (Kurtenbach and Wulf, 2012) or the period when a conflict is either interrupted or (temporarily) halted by means of a peace agreement, the victory or defeat of a conflict party or the intervention of an external actor (Smith-Höhn, 2011). Thus, existing literature largely link the concept of post-conflict to the period of cessation of full-blown violent conflict involving different protagonists. More so, the literature seems to view the concept in terms of a mental dichotomy that transforms 'conflict' and 'post-conflict' into synonyms of 'war' and 'peace', where 'conflict' signifies situations structured by violence carried out by organized actors according to a dominant conflict narrative, while 'post-conflict' implicitly signals the end of violence and the return to a peaceful normality (Lambach, 2007).

To resolve this simplistic dichotomised characterization, Lambach (2007) argues that the best way to conceptualise the term post-conflict is to view the terms 'conflict' and 'post-conflict' situations as social constructs, the kind of behaviour that is to be expected and allowed in a given set of circumstances. To him therefore, the central aspect of 'post-conflict' situation must be a narrative of peace, where conflict can be considered over when violence is no longer explained in terms of the dominant narrative of previous conflict. Reisinger (2009) on the other hand prefers an analysis that views post-conflict situations as distinct spaces that follow their own intrinsic logic. Space, in this context, is understood as a 'field of

power relations' where multiple 'sovereigns' negotiate rule across multiple spaces of political authority'.

The above arguments raise fundamental questions about a 'post-conflict' country that require further conceptual clarification. More significantly, Kenya's case, whether transitional or post-conflict, becomes of interest since this thesis draws literature from security sector and police reform from post-conflict contexts. Thus, to ask the question, 'is Kenya a post-conflict country?' invites the need to interrogate the usage of the concept in both academic and policy circles.

Based on existent literature on post-conflict settings, referring to Kenya as post-conflict raises some challenges. This is due to the fact that most post-conflict studies all over the world focus on countries that have experienced large scale wars spreading over a long period. Under this rubric, countries such as Afghanistan, East Timor, Sierra Leone, Liberia, Congo and South Sudan amongst others are mentioned. To mention Kenya under this rubric is to undermine Kenya, given that the country has never experienced war to the scale and magnitude of the above mentioned countries.

Van de Goor and Van Veen (2010) however consider Kenya 'less post-conflict' alongside Nigeria and South Africa in explaining the importance of improving the performance of the security sector in developmental and conflict prevention point of view. However, it is worth noting that Kenya exhibits characteristics common to what existent literature refers to as post-conflict: 'a high level of violence, distrust between the police and the population, systematic human rights violations by the police, including torture, beatings, disappearances, unlawful interference in private life and restrictions on freedoms of expression, assembly and association' (O'Neill, 2004).

Lambach (2007) and Reisinger (2009) conceptualisations best explain the Kenyan case. In the former's framework, Kenya could be considered post-conflict to the extent that the 2007/2008 general election related conflict

was over with the signing of the National Accord that created a power-sharing government.²¹ Any violence afterwards not explained in terms of the post-election violence is considered criminal violence. In the latter's conceptualisation, intricate power games characterised the cessation of the 2007 postelection violence and continue to be active in terms of their influence of security sector reform in Kenya during the period for which this study focuses.

For the purpose of this study therefore, post-conflict framework - though deeply contested as shown in the literature - is used primarily for three reasons: first, it does not significantly depart from transitional SSR, whether post-authoritarian transitional or democratic transitional; secondly, it is broad enough to cater for consociational power-sharing literature that defines Kenya's political transitions in the period covered by this study and finally that the concept has been institutionalised within Kenyan context, with many scholars (Brown, 2011, Noyes, 2013) and practitioners (ICTJ-Kenya, 2010, ICPC, 2011) working within it. Brown (2011, p.3), for example suggests that it would be more accurate to refer to "post-conflict" or "post-atrocity" justice than transitional justice within the Kenyan context. They consider the violence experienced in the country a turning point in the nation's history hence the gradual institutionalisation of the concept post-conflict with reference to Kenyan context.

The contradictions regarding the nature of transition and post-conflict settings impacting on this PhD are resolved through the thesis title; 'The Police Reform Process in Kenya, 2008-2014: A Case Study of Security Sector Reform in Societies Emerging from Crisis. This title achieves two things with regards to these contradictions. First, the term 'crisis' is wide enough to enable us navigate through various forms of transitions, without the compulsion of belabouring other contexts of non-transitions, which though important in the understanding of transitions, make less contribution to this study. Secondly, though Kenya is not typical case of

²¹ The National Accord acknowledged the fact that neither side of the parties to the election dispute could effectively govern the country hence giving way to the coalition government. See Chapter 3 for further clarification.

post-conflict, the title enables us to draw and contribute to literature on post-conflict security sector and police reform contexts. This, as we shall demonstrate shortly, in Section 2.3.3 and further developed in Section 2.5 forms the bulk of literature on security sector reforms.

2.3 Security Sector Reform in Context

Almost all countries require security sector reforms either on an on-going or periodic basis. Developed democracies and internally and externally secure states face pressure to reform their security sectors in the wake the security challenges of the 21st Century. On the other hand, countries prone to war engage in security sector reform to prevent relapse into fresh violence. These arguments are further expounded by Bryden and Hänggi (2004), who emphasise that states reform their security sectors according to specific security, political and socio-economic situation as well as in response to new security challenges resulting from globalisation as well as post-9/11 developments (Bryden and Hänggi, 2004, p.vii).

The above argument presupposes the existence of different reform contexts. For analytical purposes, we sample a few reform contexts existing in the literature. Forman (2002) suggests four contexts; failed states, post-civil war states, liberalising former authoritarian states and relatively established civilian governments. For Hendrickson and Karkoszka (2002), among the countries undertaking security sector reform are those that are (a) emerging from war, (b) shifting from communist to pluralist systems, (c) authoritarian regimes and (d) functioning democracies. Bryden and Hänggi (2004) suggest three contexts thus; developmental context, post-authoritarian context and post-conflict context. Excluding Forman's failed state category, all other contexts, including Hendrickson and Karkoszka's contexts, could fit within Bryden and Hänggi's classification which we now proceed to discuss.

2.3.1 The Development Context

The developmental context of security sector reform (Bryden and Hänggi, 2004), also referred to as the development approach to security sector

reform (Mayer-Rieckh and Duthie, 2012) or security as development (Francis, 2012) is mainly associated with the development community. From the development point of view, SSR describes measures aimed at creating an effective and accountable security sector that contributes positively to sustainable peace and development (Mayer-Rieckh and Duthie, 2012).

Despite the articulation of the nexus between security and development in the early 1980's through the 1980 Brandt Report on International Development and the 1982 Palme Report on Disarmament and Security, it was not until after the Cold War ended that security was re-presented as a development problem (Luckham, 2007). This renewed interest in security-development nexus significantly shaped the SSR discourse.

During the Cold War, security was defined from military point of view, which meant protecting the state from any external aggression. Thus, aid to the security sector of allied developing countries was to the extent that security forces of such states were supplied with weapons and training. This however disregarded the negative impact, be they political or economic, of the military assistance to such regions especially in terms of fomenting conflict. Thus, scholars started questioning such assistance to the 'third world' regimes that constituted a threat to the security of their citizens.

This perception therefore led to development theorists and critical security analysts beginning to address security-sector issues primarily through general critiques of the distribution of military aid and excessive defence expenditure. Security issues became 'too important to be left to security specialists alone' (Luckham, 2009, p.2). Bloated military sectors of such regimes were judged to have a negative impact on overall economic development (Cooper and Pugh, 2002). The underlying argument then was that a reduction in military expenditure in terms of reducing force levels and budgets, is both a 'good thing' in itself and, once effected, releases valuable resources for the on-going development of the country concerned (Williams, 2000).

However, in other instances, ill-conceived military restructuring bedevils political stability. Williams (2000) for example maintains that ill-conceived SSR is partly responsible for the many coup d'états in Africa in the 1990's and argues that in some cases, disarmament in some states leaves the state with limited capacity to defend itself, as with the case of Eritrea against her neighbour Ethiopia.

The above arguments portray the nature and characteristic of security sector assistance during the Cold-War period as being mainly concerned with civil-military relations. Security assistance was highly politicised and based on ideological contours of the period. Military assistance was much concerned with the technical assistance and the overarching emphasis was on state security under strict management of highly skilled practitioners who had limited interactions with non-state actors.

The emergence of the civil society in the post-Cold-War period, and increasing interest in governance and accountability issues by bilateral donors, development agencies and international financial institutions introduced a paradigm shift in the understanding of development approach to security sector assistance. The concept of security widened with military restructuring being seen in terms of holistic defence management, while police reforms broadened to include the entire criminal justice system. This therefore gave rise to more engagement with security sector reform.

The boldest articulation and the push for security sector reform agenda into the international development scene came with the Department for International Development (DfID) Policy Paper on security sector reform. The paper by Clare Short, the then British Secretary of State for International Development in March 1999 at Kings College, London, (Short, 2000) acknowledged that a reformed security sector can help to provide a safe and secure environment for poor people and communities. This in turn promotes sustainable development. Where the security sector is unreformed, ill-disciplined and repressive it can be a major source of insecurity, perpetrating violence itself rather than protecting people from it.

With these proclamations, the SSR debates gained momentum. Clare Short (1997-2003), played a key role in promoting SSR concept during its formative stages and subsequent funding, dissemination and development. Her pronouncements were later to be reinforced in both policy and academic circles.

The Organisation for Economic Cooperation and Development (OECD) for example, in its ground breaking publication, Handbook on Security Sector Reform (OECD DAC, 2007), provided perhaps the best platform to articulate the developmental context of DfID security sector reform agenda. The dominant theme reigning in the book is that a coherent security sector is a function of economic progress. Benefits of greater security to the poor are repeatedly affirmed (Ryan, 2011).

In her speech to the Security Sector Reform and Military Expenditure Symposium in London, Short (2000) argued that whilst the underlying causes of conflicts remain complex and unique to different contexts, a common theme was the role of the security sector, which in most cases is negative and fuels conflict. Elements within the security sector can be a major source of insecurity and human rights abuse, with the potential of aggravating the social and political tensions within a society. These sentiments were later to be echoed by the World Bank President on the need to bring security and development together to break the cycles of fragility and violence affecting more than one billion people living in countries affected by repeated cycles of political and criminal violence (Zoellick, 2008).

In academic circles, the push for security sector reform as a precondition for sustainable development received overwhelming attention. Hendrickson (1999) for example, highlighted the role of the security sector in the public life of the world's poorest countries. Ball (2001) proposed mainstreaming of security-sector reform as a development issue based on their comparative advantage of both the IMF and the World Bank.

In Africa, Policing in Africa (Francis, 2012) perhaps remains one of the boldest articulation of the link between policing (and police reform) and development in the post-Cold War period.²² Francis (2012) argues that the end of Cold War and neo-liberal globalisation sweeping across the continent had a profound impact on policing in Africa. There was reduction in donor support which affected resourcing and capacity building for police forces and policing institutions in weak state. This coupled with the impact of structural adjusted programmes left African police forces with limited capacities to ensure peace and public security that would spur development. Police reform therefore became a major issue amongst actors in development community.

Linking security-development debate to the Kenyan context, Kenya's Vision 2030²³ acknowledges security as a critical ingredient for development. For this reason, there has been increased investment in reforms in security agencies through capacity building, improvement in operational logistics and improvement of welfare of personnel. However as will be discussed in subsequent sections of this thesis, these initiatives did not translate into improved provision of security and policing.

The involvement of the security agencies, particularly the police in post-election violence of 2007 was a costly affair for the country thus confirming the stated position at the beginning of the SSR debates, that of the security agencies being a source of insecurity and creating conditions not suitable for development to take place.²⁴ The post-election crisis resulted in substantial damage to Kenya's social, infrastructural, institutional, and economic systems. During the period 2002-2007, Kenya's real GDP had reached an all-time average of 5.4% (Kitiabi, 2011). This was reduced to a low of -0.4% in 2008 (Global Finance, 2015). Kenya's key sectors including trade, tourism, agriculture and service industry suffered decline with the impact felt by the local people.²⁵

²² See also Hills (2000).

²³ Kenya's economic blueprint for economic development.

²⁴ See; Short (2000) and OECD DAC (2007).

²⁵ See; Ksoll, Macchiavello, & Morjaria (2009); Mueller (2008).

2.3.2 Post Authoritarian Context

Post authoritarian security sector reform closely links to countries in transition. Though diverse, a review of experiences of these countries; from those that moved from military to civilian rule in Latin America, the former communist regimes of Central and Eastern Europe (see for example EGF (2013), Caparini and Marenin (2004) and Hawkins (2001); as well as states in Africa which have moved from authoritarian forms of rule or civil war to fledgling democracies (Bratton, 1994, Colletta et al., 1996), hold vital lessons for security sector reform.

A common feature in societies transiting from authoritarianism to democracies is that the switch is always greeted with lots of optimism, with the focus on rebuilding state institutions, especially where the institutions have been completely eroded by the authoritarian regime. There is growing demand for greater accountability and transparency within the security institutions of the state (Forman, 2002) to free the people from the persistent 'undemocratic practices including pervasive corruption, uncontrolled security forces and the use of intimidation and even violence against government opponents' (EGF, 2013, p.2). These demands are however overwhelming in the short run owing to the inherent weaknesses of the state.

Pressure from citizens in transitional societies is often aimed at increasing the powers of the police, urging more wide-scale crackdowns on crime (Shaw, 2002). To illustrate this point, the handling of the public transport sector in Kenya demonstrates the clamour for which the members of the public expect dividends in post-authoritarian reform context. The NARC government leveraged on the public legitimacy after the 2002 election victory to reign in on insecurity and disorder that had existed under Moi regime. Of particular interest is disorder in the public transport industry under Moi's authoritarian regime. In 2003, the then transport minister John Michuki reigned on the criminal gangs and rogue police officers that controlled the public transport sector. He introduced what became known as 'Michuki rules' that sought to limit the number of seats in vehicles and

made seatbelts and speed governors mandatory (Hornsby, 2012). There were protests by the players in the industry, but the public mood favoured the minister.

The zeal and vigour with which insanity in the public transport sector was fought applied to the fight against rampant insecurity. Michuki acted tough on criminal gangs and gave orders that were loosely translated as shoot to kill. It is in this latter role that police was accused of human rights violation (Alston, 2010) despite the public supporting his tough approach. He was considered a top performer in the cabinet.

However, as we argue in subsequent chapters in this study, the immense influence Michuki had on the police led to gross human rights violations including curtailing the freedom of the press, which are basic principles in a democracy. In this process, there is the tendency to revert to aspects of authoritarian policing under the pretext of fighting crime. When the police raided Standard Newspaper over the Anglo Leasing scandal story that was perceived to have portrayed Kibaki's administration negatively, Michuki responded, 'If you rattle a snake, you must be prepared to be bitten by it' (Osewe, 2010). Thus, it ended that Michuki was one of those opposed to reforms that would introduce accountability in the police force.²⁶

The arguments above point to the challenges of police reform in authoritarian contexts. Whilst the police acquire some legitimacy under a new democratically elected government, elite influence on the police, and lack of accountability mechanism provide opportunity for the police to revert to older ways of doing things. Again, in the immediate post authoritarian contexts, the complexity created by the closed nature under the authoritarian regime makes it even harder to get support for reform from amongst the police themselves. There is lack of local expertise in managing the reform process or developing policies that will provide oversight of the sector. Thus, reforming state security institutions, including the police in terms of putting them under democratic governance

²⁶ See Section 5.2.

that ensures accountability and openness presents a big challenge in post-authoritarian context.

2.3.3 Post-conflict Context

While security sector reform literature recognises the various contexts upon which SSR occur, security sector reform in transitional and post-conflict settings seem to be more dominant. This, in our view, is informed by the trajectory of SSR discourse evolving to a large extent from donor assistance to countries emerging from conflict. Subsequently, there has been a huge corpus of literature on SSR in post-conflict settings.²⁷

The complexities of post-conflict settings reflect on the various terminologies for the activities relating to the reconfiguration of the security architecture popularly known as SSR. Hänggi (2004) refers to security sector reform in post-conflict settings as security sector reconstruction. 'Reconstruction' of the security sector here pertains to the necessity of rebuilding domestic public security institutions, and particularly to re-establish a legitimate monopoly of violence. The term reconstruction is necessary where security forces are dysfunctional, either because they were de facto dissolved, too small, or suffered from a loss of credibility (Brzoska and Heinemann-Grüder, 2004).

Cooper and Pugh (2002) on the other hand prefer to use the term transformation, to reflect the view that there is a substantial deficit in current security-sector governance in post-conflict societies that necessitates going beyond reformism. Concerned more with few success stories in SSR in Africa, pieces in Bryden and Olonisakin (2010) edited volume elaborate on transformation and emphasise reconceptualization of security sector engagement and approach to implementation (Zyck, 2011). Sedra (2010) takes a futuristic approach outlining preferences for future reform priorities, with more focus on people-centred approaches, which is also considered as a priority by Luckham and Kirk (2013).

²⁷ See the extensive bibliography covering various aspects of SSR in post-conflict settings at: <http://www.gsdrc.org/go/topic-guides/security-sector-reform/introduction-to-security-sector-reform>

Though diverse, language use in security sector engagement in the cited studies seem to find convergence with OECD DAC (2007). None of the studies fundamentally challenges the principles and approaches outlined in in OECD-DAC Handbook on Security System Reform (Zyck, 2011).

The post-conflict situation is often complex for security sector reform. It is characterised by weak local governance, completely dysfunctional police institutions, widespread corruption, impunity and lack of oversight mechanisms (Loh, 2010). The security sector in such situations is often characterised by politicisation, ethnicisation, and corruption of the security services, excessive military spending, lack of professionalism, poor oversight and inefficient allocation of resources (Brzoska and Heinemann-Grüder, 2004). This nature and character of post-conflict settings present both challenges and opportunities for reforming the security sector of the countries involved. Transitional and post-conflict settings are therefore a major focus in this thesis owing to opportunities and challenges that the settings present in reforming the security sectors, notably the police and justice sectors.

While acknowledging the difficulty in attempting to generalise on the nature and the required steps of security sector reform, Wulf (2004) argues that the context in which the security sector is to be reformed is vital, particularly in post-conflict situations where there can be strong incentives to reform on the part of various relevant partners, as opposed to situations of war and violent conflicts that lack broad-based will for reform. Call and Stanley (2001) share the same sentiments noting that post-conflict situations offer a chance to break the tenacity of police institutions to change by reducing institutional inertia and creating space for domestic and international actors to place major reforms on the agenda. Van de Goor and Van Veen (2010) on the other hand argue that regular developing countries stand a better chance of SSR as their political systems offer opportunity for political dialogue on security sector

challenges than do post-conflict countries.²⁸ Kibaki's first term in office in this context offered the best chance to stimulate police reform in Kenya.

Reflecting on the diametrically opposed arguments between Wulf (2004) and Van de Goor and Van Veen (2010), it is worth noting that Wulf's scale of potential for security sector reform²⁹ suggests that SSR in different contexts can be measured on a scale, which indeed is to oversimplify the contexts for SSR. Additionally, while there is a possibility for real dialogue on security sector reform challenges in regular developing countries (Van de Goor and Van Veen, 2010), experience indicates that some 'regular' countries are reluctant to reform their security systems.

The difference in perspectives on opportunities for SSR maintained by Call and Stanley (2001) and (Wulf, 2004) on the one hand, and Van de Goor and Van Veen (2010) on the other is indicative of the process transformation in the field of SSR. The former reflect early generation SSR literature involving lots of generalisations, while the latter reflects a furtherance of the debate by questioning these generalisations.

Though not typically post-conflict, our location of Kenya's police reform within transitional and post-conflict contexts is inspired by two reasons. First, there are similarities in terms of benign factors that stimulate reforms, whether in transitional or post-conflict contexts. These include factors such as societal crisis, conflict or even willingness of the political leadership and acceptance of reform amongst the public may stimulate reform.³⁰ These factors influence Kenya's police reform process in varying proportions. Secondly, the ubiquitous literature on post-conflict security sector reform provides a rich secondary source of data that directly links to Kenya. To ignore these sources would do injustice to the analysis of police reform process in Kenya. A detailed discussion of security sector

²⁸ In their arguments, regular developing countries are those that have not experienced conflicts that threaten their existence. These are countries that focus more on development priorities, for example Côte d'Ivoire and Kenya before the outbreak of postelection violence, with little focus on the problems related to the security sector.

²⁹ See Wulf (2004, p.6).

³⁰ See for instance, Van de Goor & Van Veen (2010).

reform in transitional and post-conflict countries is presented in Section 2.5 of this chapter.

2.3.4 Critiquing Security Sector Reform

Despite the exponential growth in the attention and resources devoted to security sector reform, some scholars for example Scheye and Peake (2005), argue that positive tangible outcomes remain hard to find. They argue SSR initiatives are yet to reach out to wider constituencies, non-traditional actors in this area, who can support and translate the more sophisticated concepts of national security at local level so that meaningful reform will reach members of society not only its leaders.

Indeed, the field of SSR is replete with lots of literature that view SSR from 'donor recipient' dichotomy. Early literature on SSR conceived of western norm as the yardstick for which SSR in the developing world should achieve. Quoting Chalmers (2001)³¹, Bellamy (2003, p.106) observes that 'SSR is concerned with moving a state's armed forces—its practices, doctrines and management structures—towards Western norms of behaviour'. Chalmers also identifies the norms as ones constructed by, and consistent with, the guiding norms of defence management in Western Europe (Chalmers, 2000). Whilst this view reflects the situation during the formative stages of the SSR debate, the evolution of SSR debate is increasingly being dominated by scholars from all over the world. This thesis is part of this evolution and contribution.

Donais (2009) on his part argues that the normative assumptions underpinning the SSR process in post-conflict countries, such as democratization, civilian control, the independence of the judiciary and a strong civil society role are idealistic and no country has fully succeeded in implementing. Most of these ideals are not consistent with the priorities and immediate needs of post-conflict countries. They suggest that the ideals should at best be considered as goals that post-conflict countries should work towards. Bellamy (2003) shares similar views noting that the

³¹ See Chalmers (2001, p. 21-26) for further elaboration.

normative claims at the heart of SSR derive from democratic peace thesis,³² which is in itself is in doubt and problematic in post-conflict countries. He identifies three generic criticisms associated with this foundation thus; that the democratic peace thesis does not actually exist, that SSR is an agenda imposed by the West and democratic ideals do not take root if they are imposed (through aid conditionality for instance) and that SSR and the promotion of liberal democracy may foster instability particularly if the reform process is not indigenously owned and internalized.

While many police reform packages in countries emerging from crisis include the above principles, the processes are largely subject of criticism. Neild (2006) for example argues that most of these principles reflect a Western approach largely ignoring the realities in post-conflict situations, while Hills (2009) argues that the reform that emerges in such contexts is often a 'grafting' of aspects of international policing models on to the pre-existing national model, which is, generally, an inherited colonial model of policing. Yet, Luckham and Kirk (2013) decry the overbearing bias of these studies on obstacles of reforms from practitioners' point of view and disregarding the end-users who should benefit from reform particularly in hybrid political contexts. This argument thus brings to question ownership of reforms in transitional post-conflict contexts which is elaborately developed in Section 2.5.1.

2.4 Operationalising Security Sector Reform: Strategic and Practical Challenges for Success in Transitional Countries

The challenges facing SSR and particularly police reform in transitional countries are enormous. The complex nature of post-conflict situations and conceptual challenges make it difficult to come up with a unified approach to the implementation of police reform. At the conceptual level, what constitutes security and in essence security sector reform remains

³² Democratic peace thesis is the idea that democracies tend not to wage war on each other. Advocates argue that structural constraints (for example legislatures, the rule of law and electorates) and normative constraints (for example compromises and legitimacy) on decision makers make it impossible to make rash decisions to wage wars.

problematic in terms of designing the content and substance of the reform agenda.

SSR is an intricate and complex endeavour even to the very rich and highly resourced organisations. 'The same applies to many national governments engaged in their own reform programmes with national budgets straining under the effects of tight monetary policies' (Scheye and Peake, 2005, p.306). Similarly, police reform is an expensive undertaking that cannot be singlehandedly financed by countries emerging from crises or post-conflict. In this sense, the holistic approach advocated for in the literature and emphasis on multi-sectorial reform programme remains unrealistic.

As a political process, police reform is bound to change the balance of power amongst different actors. It is therefore more likely to be resisted by those who benefit from the old order, especially those who see police reform as a direct threat, a zero-sum game where they stand to lose and others gain. While local political elites may be the most obvious local owners, they can also be the most problematic (Donais, 2009). Scheye and Peake (2005) argue that while reform appears indisputable to outsiders, those within the institutions may not perceive it as such. This argument perhaps is built on widely perceived notion that security sector institutions throughout the world tend to be conservative, tradition bound organisations distrustful of reform initiatives and resistant to change (Brzoska, 2003). Ryan (2011) however faults the 'often mistaken' argument that the police are conservative, noting that 'the modern police organisation is in fact inherently dynamic' (Ryan, 2011, p.1). Whatever the case, police reform undoubtedly faces persistent institutional resistance especially in post-conflict situations where the police sector is highly politicised and ethnicised.

Police reform is also a multifaceted process involving multiple actors. Getting the various parties to agree on a common ground is always daunting to those involved in the implementation of reform programmes. In particular, beneficiaries of the politicised and ethnicised systems are

more often likely to sabotage the reform process. Where the police themselves perceive that reform is likely to lead to weak policing and they are more likely to lose their jobs, they become rigid to change.

Since post-conflict situations are characterised by lack of expertise in the management of reform, indigenising security sector reform becomes a problem. Lack of expertise has meant that reform in transitional societies have had close links with foreign funding organisations and the law enforcement agencies of foreign governments assisting in the reform process. These interventions have not been uncritically accepted in the recipient countries. There is some consensus amongst policy makers on the receiving end that many assistance programmes are not designed with the recipient country in mind and that assistance such as training is often offered simply because it was available, rather than because it is relevant to the needs of transitional societies (Shaw, 2002).

Yet, another SSR and police reform challenge in post-conflict situations is the formation of powerful anti-reform alliances between political partners during the period preceding elections. 'The interests of these partnerships run diametrically counter to the recreation and/or strengthening of the criminal justice institutions and often exert powerful, malignant, and subterranean influences that may perpetuate strife by other means as the establishment of a sturdy rule of law may threaten and erode their ability to manipulate or exercise power and control' (Scheye and Peake, 2005, p.304). Where such an alliance wins in a competitively held elections and gains support amongst civil society groups, the reform process is technically at risk of grounding to a halt.

From the forgoing literature, the challenges facing police reform in post-conflict transitional societies are invariably innumerable. It however remains unclear how, in the midst of all these challenges, post-conflict countries weave through these challenges in reforming their police sectors. This PhD takes Kenya as a case study, exploring how these challenges inhibit progress and how the challenges are addressed by stakeholders. Ultimately, the study hopes that the choices and priorities

could be replicated in post-conflict countries in similar circumstance as Kenya.

2.5 SSR in Transitional Post-Conflict Societies

This section develops from Section 2.3.3 of this chapter. It explores in depth, the dynamics of SSR and more so police reform in developing transitional post-conflict countries. The literature so far explored indicates that ‘priorities for SSR depend on the specific context’ (Greene, 2003, p.5), with post-conflict situations forming very unique circumstances for SSR. This section discusses police/SSR in post-conflict situation under the five areas thus; the issues, priorities and challenges of implementing SSR in post-conflict countries; political transitions and power-sharing, justice reform in transitional post-conflict societies, ethnic dimensions of police reform and finally peace processes and power-sharing processes in multi-ethnic contexts.

2.5.1 Issues, Priorities and Challenges of Implementing SSR in Post-Conflict Countries

This section is limited to the first three research questions guiding this study. It focuses on reform priorities and processes and the contributions of local actors on police reform, as much as exploring the literature on how the challenges and deficiencies are addressed within the broader SSR programmes and initiatives.

The paradigm shift in the understanding of security and security sector reform in post-Cold War period, hitherto understood in terms of civil-military at the height of the West–East divide, was a watershed in the trajectory of security sector reform. It introduced an expansion of the SSR concept beyond the narrow confines of defence boundaries. Proponents of this new paradigm maintain that security, which comes through an effective, impartial and humane introduction of law and order alongside the extension of good governance (Cooper and Pugh, 2002) is a priority to social development and human-rights protection. Security sector reform is thus expressed in terms of the dominant narrative of its holistic

approach (Wulf, 2004, OECD DAC, 2007) integrating all those partial reforms such as defence reform, police reform, intelligence reform and justice reform, that in the past were generally seen and conducted as separate efforts (Hänggi, 2004).

2.5.1.1 Reform Priorities in Transitional Post-conflict Countries

Proponents of holistic approach to SSR for example, Ball and Hendrickson (2005) emphasize democratisation and wider societal transformation and consider police reform as a component of the wider SSR. They argue that police reform integrates with the reform of all security institutions, state and non-state. On the other hand, traditional policing community scholars for example Hills (2000) and Holm and Eide (2000) emphasise more on the police as an institution-their focus is narrow, with the objective being to promote professional efficiency and capability of the police. Other scholars for example Ryan (2011) adopt a middle ground approach, arguing that very subtle differences between police reform and security sector reform exist and consider the police as an agent of transformation, 'a source of trust from which a chain of security will grow' (Ryan, 2011, p.139). For Ryan (2011) therefore, police reform is a foundational entry point of SSR.

Based on the above observation, would reform in countries for example, Ethiopia and China which have been accused of poor human rights records, fit the realm of democratisation and societal transformation? The answer to the question is debatable, but such reform reflects more of social accountability of the state in improving provision of security and access to justice, rather than democratisation. Again, this suggests competing perspectives in SSR/police reform literature involving the traditional SSR community and the police reform communities focusing on holistic and narrow police professional reform respectively. This thesis considers police reform in Kenya as a component of the wider SSR initiatives in Kenya.

In supporting reform in post-conflict countries, international actors rely heavily on OECD DAC Handbook on Security System Reform: Supporting Security and Justice (2007). The ground breaking text on reform provides four objectives for security system transformation including; establishment of effective governance, oversight and accountability, improved delivery of security and justice services, development of local ownership of the reform process and sustainability of justice and security service delivery (OECD DAC, 2007). Building on these blocks, the UK comes closest to the OECD-DAC's vision of SSR especially in Africa where it remains the leading donor of SSR programmes. These elements are discernible in police and justice programmes in Malawi, Nigeria and Kenya; and support for Defence Review in Uganda which seek to improve oversight, transparency and accountability within the Ugandan Ministry of Defence and Armed Forces (Bendix and Stanley, 2008).

Transitional post-conflict countries undertaking reform have embraced OECD DAC (2007) ideals though in some cases nuanced under different terminologies such as professionalization of the police, civilian policing (the key component of which was the demilitarisation of policing, as in the case of Latin America), democratic policing (to indicate that the police are now at the service of citizens, rather than of a regime) and the shift in name from 'police force' to 'police service'. The uniqueness of every single case naturally highlights the need to prioritise reform initiatives depending on the reform context.

While the reform initiatives remain more or less similar, context specific programmes require certain levels of 'trade-offs' between the short and the long-run. For example, in the immediate post-conflict period, security of the people is more important and it might therefore be necessary to focus on 'capacity and commitment of the police and judiciary to support law, order and access to justice for communities and citizens' (Greene, 2003, p.5). In Kenya, four key areas of police reform priorities capture the aspirations of the country's police reform priorities namely: police professionalism, police accountability, operational/administrative reforms, and institutional policy/legislative reforms (GoK, 2009).

Police professionalization, more often promoted strongly by the police themselves, underscores non-partisan, high-tech, information driven policing (Neild, 2006). In its largest sense, it argues that the police accept the need for effectiveness and justice, that they acquire the skills on how to reconcile both demands in the varying conditions of their work, and they apply such skills consistently (Caparini and Marenin, 2004). Critics however fault professionalization of policing without addressing human rights abuses by the police. They argue that there are instances where professional police have enforced repressive legal systems (Neild, 2006) and that a revolutionary transformation for most police in post-conflict or crisis situations must be that which works to serve the people and protect their human rights.

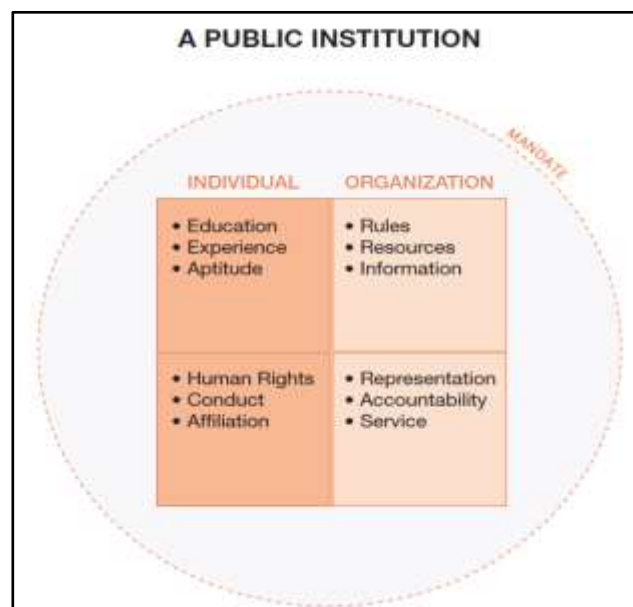
SSR seeks to promote the principles of accountability, transparency and participatory democratic decision-making processes into the institutions of the security sector (Ball and Brzoska, 2002). In the views of Bellamy (2003), accountability principle demands that far from responding to government direction, the police must respond to security needs of the public at large - 'Representatives of security and justice institutions must be liable for their actions and should be called to account for malpractice' (OECD DAC, 2007, p.112). In a post-conflict context, multiple indicators³³ for success determine the path of reforms.

Effective and efficient provision of state and human security within a framework of democratic governance is core in police reform achieved by operational and administrative reforms. The principle hinges on the structure of police organisation specifically designed to meet the security needs of the public. Inspired by W. Richard Scott's *Institutions and Organizations* (2001), Lidén (2012) uses three pillars, namely; the regulative, normative and culture-cognitive pillars as the basis for community policing in Kenya. Perhaps the best model for reforming the

³³ These may include but not limited to; increased parliamentary debate of security and justice issues and strengthened procedures for oversight, increased percentage of population in target areas have confidence in security and justice providers, transparent process established for development of national budget for security and justice institutions and Security and justice institutions are more representative of different social groups (OECD DAC, 2007).

police is the Capacity and Integrity Framework (CIF) developed by (OECD DAC, 2007). The framework identifies the individual and the organisation as fundamental dimensions of the organisation and focuses on capacity and integrity as reform areas. Capacity entails the resources available to implement mandate while integrity relates to the means by which the resources are exploited to fulfil the mandate in accordance with the tenets of professionalism, good governance and human rights standards. This is illustrated in Figure 1 below.

Figure 1: Capacity and Integrity Framework: Assessing and Planning



Source: OECD DAC (2007, p.60)

Post-conflict police systems are often characterised by weak oversight structures with interference from the political elite. In order to reclaim the independent role of the police, SSR considers the development of oversight mechanisms, both internally and externally, as important. Thus, reform programmes prioritise putting the police under civilian oversight, building capacities of both civilian leadership and strengthening policymaking capacities of legislators and government officials. Expertise also needs to be built in civil-society organisations, the media, and academic circles to develop external institutions that can conduct

research, monitor and advocate democratic public security policies (Caparini and Marenin, 2004).

A holistic approach to police reform provides the best bet to transforming the police as an actor in the security sector. Reform in one area should not take precedence over another, as in Afghanistan where a recent assessment suggested ‘that governance and accountability issues have been displaced by a focus on increasing the operational capability of security forces’ (OECD DAC, 2007, p.64). How Kenya manages to weave these ideals and priorities into its police reform programmes, and how, and to what extent these experiences provide lessons on police reform experiences in post-conflict situations remain of epistemological interest in this study.

2.5.1.2 Contribution of Local Actors to Police Reform and Wider SSR Processes

This study also explores the contributions of local actors to police reform and wider SSR processes. In order to achieve this, a clear understanding of ‘local ownership’ parlance often used in police reform/SSR literature is essential. Deriving from the international development community (Donais, 2008), at the heart of the concept of local ownership in SSR discourse are issues to do with decisions, control, implementation and evaluation of the reform process. Often nuanced as ‘domestic constituencies’ (Greene, 2003) ‘people-centred’, ‘locally-owned’, (OECD DAC, 2007), SSR agenda seems to clarify ‘local ownership’ as a participatory framework through which views of stakeholders are articulated and expressed. Based on this participatory framework, this thesis explores the question: what is the contribution of local actors to police reform and wider SSR processes in post-conflict societies, particularly Kenya?

Existing literature for example Nathan (2008), Donais (2008) underscore the centrality of local ownership in any effective SSR process. There is agreement that the contribution of local ownership is too important to be

ignored and that the success of any SSR process depends on how the process is internalised and indigenously owned. Despite this agreement, the dominant narrative in the framing of local ownership in SSR literature appears to take the 'donor-recipient' relationship with roots from the developmental community which focuses on involving the actors in recipient countries in the implementation of donor aid. Under this framing, local ownership suggests a diametrically form of control of the reform process with 'foreigners' on the one side and the 'locals' on the others (Donais, 2008) and presumes that SSR is an entirely a donor driven agenda. Whilst it is prudent to explore competing interests amongst the donor community in SSR, it is worth noting that SSR is in itself intrinsic to the host communities whose interests invariably drive the agenda.

The above argument however does not preclude donor community local ownership agenda, but argues for deeper insights and interrogation of the competing local institutional and political agendas that influence the direction of SSR processes. For instance, periodic SSR processes in the developed world have nothing to do with donor-recipient framing, yet still remain affected by local ownership debate, in this case not as much as foreigners on the one side and locals on the other, but more by the institutional and political interests.

In the context of police reform, this could involve the interests of top management and lower level management or better still, the broader political interests in the control of police institution. In the case of the United Kingdom for example, an effective safety and security strategy is that which: contributes to the improvement of core functions of the state police such as patrolling, 'receiving charges from the public, detection, and preparing prosecutions; capable to mobilize a wide range of stakeholders (including non-state security providers) and integrates the police into the wider system of justice creating links between the system and civil society' (Loh, 2010, p.12). This strategy has nothing to do with the donor-recipient approach dominant in the SSR literature. To explore ownership in this context would therefore mean exploring how the strategy navigates through the involvement of local communities and the

wider criminal justice system. Using the donor-recipient framing would serve to exclude or at least diminish the contributions of 'local constituencies' yet they substantially affect the manner in which SSR process is pursued.

The divergence in arguments from the two distinct SSR local ownership literatures; the aid-recipient type ownership and institutional/political ownership reform agenda, invites more questions than solutions towards long-term dividends for police reform and SSR initiatives. By its very nature, operationalising local ownership remains a challenge and determining the contributions of the 'local owners' to the reform process is still difficult. Questions still abound on 'what ownership actually entails, and to whom precisely we are referring when we talk about locals' (Donais, 2008, p.1). This is even more problematic in the Kenyan context owing to the constellation of different local agendas that shape police /SSR ownership discourse in Kenya.

Proponents of the donor-recipient relationship in SSR base their arguments on the normative principles of SSR including democratic norms, human rights and rule of law. These principles however may not necessarily be in conformity with the aspirations and interests of the 'locals'. Whether the attainment of the normative claims threshold is achievable is in doubt especially in post-conflict and post-authoritarian contexts where control of the security sector remains the intent of competing local elite. Such situations have been witnessed for example in Burundi, Kenya and Bosnia where 'tensions have been particularly apparent in police reform questions, as political elites on all sides of the country's ethnic divide strive to maintain control of policing for political purposes' (Donais, 2008, p.6).

To deal with the tensions arising from the donor-recipient dichotomy, scholars offer varied solutions. Scheye and Peake (2005) for example suggest breaking the reform into smaller manageable parts, for example identifying who is the beneficiary for what type of practical achievable reform; what level of success can be expected; which domestic

constituencies need to be involved for each type and phase of reform; and finally, what methods of persuasive pressure, if any, may need to be applied to achieve that desired level of participation given the expected reconfiguration of 'owners'. Hansen (2008) on the other hand suggests that local ownership has to be brought about incrementally in a process that balances security concerns with the need for genuine ownership. These arguments though suggest ways of mitigating the tensions, do not depart from the donor-recipient model that dominates the literature and do not sufficiently offer guidance in dealing with the transitional situations as Kenya.

Yet, a probably more proactive approach is offered by Donais (2008). Rather than view ownership in binary foreign-local terms, it is sensible to consider it as a legitimate exercise of political authority, in terms of both content and direction of reform, which emerges out of negotiations amongst the local and international actors. The negotiation process takes note of the liberal values while at the same time taking cognisance of the local contexts in which the reform takes place. This argument though introduces the element of negotiated settlements is founded on donor-recipient relationship which this thesis challenges. How might the competing institutional and political balance be achieved amongst the local stakeholders in the reform? This study focuses more on these dynamics through which negotiated settlements amongst the locals affect the police/SSR processes.

This framework suits this research for in so doing it helps untangle the local discourse in Kenya which greatly affects police reform. For example, the police as local stakeholders in the reform process can only be professionalised and brought under democratic control if the police themselves are committed and involved in the reform process. Therefore, to what extent are the police rank and file involved in Kenya's police reform and how does this affect the reform process? The same applies to the civilian authorities, civil society groups and local communities who are beneficiaries of police reform.

2.5.1.3 Responding to Challenges of SSR/Police Reform in Transitional Post-conflict Countries

The complex and political nature of SSR in post-conflict invites multiple competing responses from stakeholders, both local and international. Whilst these responses are enumerated in the literature, often missing is how these responses impact on police and broader SSR process. In exploring existing literature related to the third secondary research question, this section explores various debates in different transitional contexts, particularly focussing on the extent to which stakeholder responses to challenges and deficiencies of police reform affect the overall implementation of SSR.³⁴

Literature reveals that donor assistance to SSR in post-conflict situations at the formative stages was characterised by more emphasis on the liberal template, that long-term development or democratization programmes cannot succeed without the provision of stable security by legitimate and democratically accountable security forces (Bellamy, 2003), disregarding (or at least with little regard) the social-political and institutional contexts in which reform were applied. Thus, very little fundamental reform was achieved owing to unrealistic assumptions about how the state was to relate to the security sectors of respective post-conflict countries. To address this problem, donors have increasingly realised that the greatest potential for security sector reform exists where it is supported from outside but driven by strong internal dynamics (Hendrickson and Karkoszka, 2002). As such, successful examples reform cases such as Sierra Leone exhibit a clear national vision for reform and political will at the highest levels of the government.³⁵

The post-Cold War period saw the emergence of strong and vibrant civil society groups offering oversight roles and pressuring respective authorities to reform their police and justice sectors. Most of the groups are externally funded, thereby suggesting an alternative means for the

³⁴ See Section 2.4 for operational challenges and deficiencies of SSR in post-conflict situations.

³⁵ See; Onoma (2014).

donors to push their agenda without being directly involved in police reform discourse. DfID for example identifies support for civilian organizations that might act as watchdogs over the security sector as one of the five areas³⁶ of support to countries undertaking SSR (Bellamy, 2003).

As already indicated in Sections 2.2.4 and 2.3.3, post-conflict settings may offer opportunities to restructure security sector institutions while at the same time 'present hostile environments for the implementation of ambitious reform plan' (Neild, 2006, p.38). The rising insecurity in such contexts often invites public clamour for 'iron hand' responses to increasing violence that include demand for militarised approach to dealing with criminals and tough legal measures. Such responses from members of the public may not provide for space for oversight and accountability issues which form the heart of police reforms. Such demands often make the police to revert to extra judicial measures to deal with crime. The result is increasing tensions between members of the public and civil rights groups. Where the police fail to crack down on crime, vigilantes have sprung up to fill the security void. How various stakeholders' address the challenges of reform remain of interest to this study hence the question, how have stakeholders responded to challenges and deficiencies of SSR in Kenya?

2.5.2 Political Transitions and Power-sharing: The Politics of Police Reform and SSR

2.5.2.1 Politics and Security

Politics and security are like the two sides of a coin. Scholars and practitioners alike agree that the two affect each other in equal measure. The success or failure to reform the security and police sectors depends

³⁶ The five areas of support included supporting the establishment of structures of proper civilian control over the military; training members of the military in international humanitarian law and human rights; strengthening national parliamentary oversight of the security apparatus; supporting civilian organizations that might act as watchdogs over the security sector and supporting the demobilization and reintegration of ex-combatants.

on the political goodwill. The security sector is also crucial to political power, both in the 'macro' sense of regime stability and in the 'micro' sense of exercising day-to-day political control.³⁷ Security sector reform is therefore closely tied to domestic processes of political and social change (Hendrickson and Karkoszka, 2002). For Nathan (2008) and Wulf (2011), SSR is profoundly political, and therefore faces resistance or lack of political will (Mayer-Rieckh and Duthie, 2012). Despite the above strong link between politics and security sector reform, there still exists a gap in the articulation of this link in the literature.

Although post-conflict situations provide opportunities for far-reaching police reforms, literature reveals little attention was given to police reform at the formative stages. For example, in a study of twelve cases of police reforms in peace agreements, Call and Stanley (2001) found that in only eight cases was any reform really implemented. And only in the cases of El Salvador, Namibia, and South Africa were most of the provisions and international expectations regarding police reform realized in practice. In two cases (Cambodia and Nicaragua), police reforms occurred, although they were omitted from peace accords. These reform processes, however, tended to be less extensive than those written into peace agreements. This scenario has gradually changed as evidenced by recent peace agreements, for example the Global Political Agreement of Zimbabwe (2008) and the Peace Accord of Kenya (2008) which have strong SSR components including the reform of the police.

In a review of cases of police reforms in Africa, namely; Angola, DRC, Mozambique, Kenya, Namibia Nigeria amongst others, (Rauch and Van der Spuy, 2006) discovered that each case provided proof of the intimate connections between police and politics. They argue that police reform is deeply a political endeavour - political interests are fundamental to the process of reform. Nevertheless, security reforms remain one of the most important mechanisms for preventing political violence and common crime in many post-war settings (Call and Stanley, 2001).

³⁷ This debate is further developed in Chapter 4 in relation to Kenya.

Effective police and justice reform supports a positive climate even when broader political arrangements are uncertain or less than democratic. On the other hand, an ill-considered security sector restructuring programme has the potential of interfering with political stability. Williams (2000) for example argues that there are compelling examples of countries for example, the Central African Republic in the mid-1990s, the frequent mutinies in the former Zaïre and the 1997 coup in Sierra Leone where an ill-considered security sector restructuring programme has actually bedevilled political stability.

The above discussion suggests a growing corpus of literature explaining the relationship between politics and SSR, specifically police reforms in post-conflict countries. While the literature provides sufficient evidence and lessons that police reform is an important ingredient for long term peace in post-conflict countries, the influence of power-sharing dynamics on police reforms in transitional post-conflict countries remain scanty. There is limited literature that explores the constraints, as much as opportunities for police reforms in countries that have adopted power-sharing agreements. This PhD fills this gap in its Chapter 5, by exploring the Kenyan case in presenting how power-sharing shapes the SSR and police reform process in transitional post-conflict environments.

2.5.2.2 Understanding Post-Conflict Power-sharing

Power-sharing agreements have in the recent years become popular tools of resolving conflicts in transitional post-election crisis societies. Spears (2000) defines power-sharing as a situation whereby government posts are distributed across the most powerful political parties or groupings. Rothchild and Roeder (2005) however distinguish between power-sharing institutions and policies to imply formal arrangements in the former and policies that can be formal or informal in the latter.

Whilst different understanding of power-sharing abound, consociationalism remains the most cited form. Advocated by Lijphart

(2008),³⁸ consociationalism argues that political culture and social structure are empirically related to political stability and that societies divided by sharp cultural or ethnic, racial and religious differences or are deeply fragmented because of these differences would experience political instability. However, there are instances where such differences do not necessary lead to instability-the societies are divided yet stable. It is these that Lijphart calls 'consociational democracies' (Lijphart, 2008).

In a consociational democracy therefore, leaders of rival sub-cultures may engage in competitive behavior and further aggravate mutual tensions and political instability. But they may also make deliberate efforts to counteract the immobilizing and un-stabilizing effects of cultural fragmentation (Lijphart, 2008). In this respect, a variety of institutional arrangements with deliberate efforts by the elites to stabilize the system are required (Spears, 2000). Lijphart thus proposes consociational solutions that emphasize the importance of sharing power among different segments in the society for purposes of stability. A grand-coalition government in which power is shared among different factions that form the coalition is the most typical consociational solution in fragmented societies (Kanyinga, 2009).

Four structural features are shared by consociational systems – 'grand-coalition, cultural autonomy, proportionality and minority veto' (Lijphart, 2008, p.4). Though Lijphart's model was used in describing power-sharing in stable but divided western democracies³⁹ (Wolff, 2006, Rothchild and Roeder, 2005), it is of 'particular interest in Africa, which has become the arena for several types of power-sharing experiences' (Jarstad, 2009, p.42). Recent cases in Africa include Kenya and Zimbabwe in 2008 where contested election results and ensuing violence led to elite power-sharing. Earlier examples include agreements struck in Rwanda (1993), Somalia

³⁸ Arend Lijphart's 'Consociational Democracy' published in 1969 is often regarded as the 'classic' statement of consociational theory. For our purpose in this study, we refer to Lijphart (2008) which contains his articles and chapters from 1969 to 2004. See; Lijphart (2008).

³⁹ The often cited examples include ethnically homogeneous but divided countries such as Cyprus, Switzerland, Austria, and the Netherlands with no cases of civil war in the recent history.

(1997), Angola (2002), and the 2003 agreements in Burundi, Comoros, DRC and Liberia.

The focus in this study is recent cases where an analysis of the impact of such agreements on SSR can be teased out. This begs the question; 'to what extent has power sharing politics influenced police reform and wider SSR in post-conflict situations, specifically in Kenya?' How does competitive behaviour and tensions amongst elites (Lijphart, 2008) in a power-sharing arrangement play out in reality within the context of SSR? Does power-sharing facilitate or constrain police/SSR processes in post-conflict countries? Do the elites forming the power-sharing government accept loss of power through legitimate SSR processes?

2.5.2.3 Post-conflict Power-sharing and SSR

Recent post-conflict power-sharing arrangements include SSR as part of the agreement. In Zimbabwe for example, the Global Political Agreement (GPA) of 2008, which led to the creation of the Government of National Unity (GNU), makes explicit the recognition of the need to make the security sector part of the democratic process (Chitiyo, 2009), while Kenya's National Accord recognizes institutional reforms, including judicial, police and civil service, as critical if the country were to remain a unified nation-state (Kanyinga, 2009).

The cases of Zimbabwe and Kenya demonstrate that while power-sharing sets the stage for ambitious reforms of the security sector, the challenges posed by the political elite, ostensibly to control the security sector remains one of the greatest threats to SSR. The structures created by power-sharing arrangements; namely coalition government, cultural autonomy, veto power and proportional representation serve to affect the undertaking of police reforms. Rather than exploit the structure to expand inclusiveness of sectors otherwise isolated before the outbreak of conflict, the political class exploit the structures to gain full control of the security sector, thus threatening the goodwill for reforms at the formative stages of power-sharing arrangement. This serves to frustrate police reforms during

the life of the power-sharing agreement. Detailed discussion on the impact of power-sharing on police reforms in Kenya is presented in Chapter 5.

2.5.3 Justice Reform in Transitional Post-conflict Societies

The ‘police–justice reform approach’ adopted in this section is in line with a holistic approach to SSR advocated for in the literature. This is bolstered by the argument ‘the population interacts most with the police in terms of contact with the justice system’ (Loh, 2010, p.6) and that an effective justice system is a prerequisite for the effectiveness of the police in the provision of order and security.

In the recent years, international aid to security sector reform, especially DfID funded programming, to post-conflict countries has incredibly assumed the format of Security and Justice Sector Reform (SJSR) combining ‘security sector reform’ (SSR) and ‘safety, security and access to justice (SSAJ)’ (Ball et al., 2007). Security and Justice Sector Reform is often used to emphasize the fact that security and justice work occurs under the same umbrella and underscores ‘the importance of a coherent strategic approach to reforming the security and justice sector’ (Ball et al., 2007 p.7).

At another level, closely linked to justice reform under the wider SSR is ‘justice sensitive security sector reform’. This relates to ‘reform initiatives within SSR programmes to address the legacy of impunity for human rights violations and the ongoing human rights violations committed by elements within the security forces’ (Davis, 2009, p.7). Unlike standard SSR processes, justice sensitive security sector reform brings to the fore the past, especially human rights abuses by ‘calling attention to the systemic causes of abuses and mobilizing support behind systemic reform efforts that address such causes, and by helping SSR programs to effectively address the legacies of such abuses’ (Mayer-Rieckh and Duthie, 2012, p.2). Efforts such as vetting are undertaken to ensure that police officers involved in human rights abuses do not hold public office

and that victims and other marginalised groups are empowered to guarantee their security and access to justice.

Despite these recognitions, literature on justice reform in post-conflict situations paint a gloomy picture. In their commissioned study to determine the quality and effectiveness of UK assistance to Security and Justice Sector Reform in Africa, Ball et al. (2007) found that 'UK SJSR interventions have been partially effective'⁴⁰ within different programmes (with the possible exception of Sierra Leone) (Ball et al., 2007, p.xi-xii). They attribute this state of affairs to 'the tension within DFID between the security and justice functions of policing and political environment in the host countries that in most cases is 'not conducive to the pursuit and achievement of the desired outcomes' (Ball et al., 2007). Whilst the former is essentially a donor problem, the latter reflects the challenges often associated with post-conflict situations which hardly support justice reform and often reflect priority choice for security functions of policing rather than the justice functions of policing.

Davis (2009), in a study to recommend ways in which the EU may incorporate justice-sensitive reform initiatives within SSR programmes in the DRC, found that SSR initiatives and power-sharing arrangements in the DRC often failed to include justice reform, or included it later,⁴¹ deliberately for fear of bringing human rights abusers into accountability. In the study, women bear the greatest brunt of 'human rights violations (such as arbitrary killing, illegal detention and extortion) at the hands of security agents' (Davis, 2009, p.21) yet obstacles for women seeking justice remain high. Where individuals are found guilty, they either 'escape' and or 'remain at large'. This situation therefore denies segments of the society opportunity to fully participate in country specific SSR initiatives.

⁴⁰ 'Partial effectiveness' means that programmes generate some useful outcomes but cannot produce a multiplier effect Ball et al., (2007).

⁴¹ The Security Sector Roundtable of 2007, bringing together Congolese and international stakeholders on SSR for example only tabled army and police reform. Justice system reform was added later in February 2008.

How does police reform integrate with justice reform in post-conflict countries? While the two invariably need to proceed together, and that SSR framework strongly anticipates close coordination between police and justice reform, literature suggests that this is not always the case. In the case of Kenya, reforms in the judiciary picked up faster as opposed to the police which was bogged by lots of controversies. This study investigates police reform and explores the extent to which justice reform proceeded alongside police reform in Kenya.

2.5.4 Ethnic Dimension of Police Reform

The establishment of multi-ethnic police service remains one of the key objectives of SSR especially in multi-ethnic societies in which ethnic tensions abound. Where the police services are dominated by a particular ethnic group, there is a tendency to resist reform amongst the police officers representing the dominating ethnic group. In such cases, failure to address ethnic imbalance often leads to parallel chain of command based on ethnic affiliations. Police reforms in Bosnia and Herzegovina are examples in which 'parallel chains of command and loyalties based on membership in specific ethnic groups can persist in reformed police units, seriously undermining their performance (Stodiek, 2008, p.6). Ethnic agenda and allegiance to ethnic political affiliations dominate the performance rather than professionalism and impartial service delivery to the public.

The case of Liberia is similar. One of the key drivers of the conflict witnessed in the country was ethnicisation of the security forces by Samuel Doe (1985-1990). During his reign, 'he placed many of his fellow Krahns in key military positions' (Ebo, 2005, p.15), a move that eventually led to widespread discontent amongst Liberians and subsequent armed rebellion. The successive regime led by Charles Taylor (1997-2003) followed suit, by creating a security apparatus that was loyal to him and dedicated to maintaining his survival. Liberia's case and many others demonstrate the negative impact of ethnic influence of the security sector that reform needs to address.

Proponents of peacebuilding framework of police reform argue that ‘multi-ethnic police services can help to overcome the legacy of ethno-political conflicts’ (Stodiek, 2008). They argue that police reform should be able to address ethnic imbalances in the police forces in post-conflict countries by deliberately increasing the numbers of the erstwhile marginalized groups. But again, raising the numbers of officers from minority groups comes with its own challenges. There is often no guarantee that the initiative will be accepted across the board. Thus, a deliberate move to involve the locals for ‘buy in’ and confidence in police reform is necessary. For this reason ‘comprehensive and long-lasting confidence-building programmes such as “community policing” are necessary (Stodiek, 2008, p.8).

A review of literature on the impacts of ethnicity on police reform reveals that establishment of multi-ethnic security systems remain a challenge. Yet in the words of Stodiek (2008) ‘very little empirical research has been conducted on these issues so far’. Kenya is no exception. How is police reform addressing the problem of ethnicity in Kenya’s police service? Literature on ethnicity and security system in Kenya reveals a systematic exploitation of ethnic dominance and nepotism by the ruling elite.⁴² As evidenced in the literature; this leads to discontent from the minorities and is partly to blame for the conflicts witnessed in a number of countries. Whilst it is not within the scope of this thesis to comprehensively explore ethnicity and SSR, Kenya’s case is of interest owing to the links between Kenya’s police service and the ruling elite. This helps unpack and explain the response of the police to the 2007 post-election violence in Kenya.

2.5.5 Peace Processes and Political Power-sharing in Multi-Ethnic Contexts

The Agenda for Peace⁴³ (Boutros-Ghali and United Nations, 1992) gave impetus to peacebuilding agenda as a distinct field in the international

⁴² See Section 2.6 of this chapter for details on systematic ethnicisation of the security sector by Kenyatta, Moi and Kibaki regimes respectively.

⁴³ An Agenda for Peace defines post-conflict peacebuilding as ‘*action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict*’. See Boutros-Ghali & United Nations (1992).

arena. It rekindled interests amongst peacebuilding community to pursue new ideas that go beyond traditional approaches that had hitherto mainly focussed on conflict prevention, or negative peace⁴⁴ (Chandler, 2009), alongside ‘liberal peacebuilding’ frameworks that were so prevalent as a way of understanding peacebuilding in the 1990s (Curtis, 2013).

Proponents of liberal peace thesis argue there is no real alternative or modification to liberal peacebuilding (Richmond, 2012), while critics often concentrate on its problems.⁴⁵ The critics argue that liberal peace intervention has not significantly helped societies transition towards sustainable peace, but contributed to hybrid regimes combining both democracy and authoritarianism. More profoundly, critics argue liberal peace is overly ambitious in ‘introducing liberal, democratic institutions into complex, damaged and deeply-divided societies’ (Donais, 2012). These institutions do not work as the local structures are impervious to change (De Waal, 2009, p.99-113) or that local or indigenous peacebuilding may be inscribed with values that conflict with international programmes but may have greater grassroots legitimacy (Mac Ginty, 2008).

The argument critics present is that liberal peacebuilding is not appropriate in complex conflict ridden societies, especially where multi-ethnic difference catalyse conflict.⁴⁶ It represents, in the language of United Nations, ‘horizontal integration’ which fails to penetrate beyond the state institutions and the elite level actors. Thus, critics propose the ‘vertically integrated’ peacebuilding (Donais, 2012) in which peacebuilding, though may be internationally driven and funded, is

⁴⁴Negative peace as used here refers to absence of violence. Positive peace includes positive content including constructive resolution of conflict and the creation of social systems that serve the needs of the whole population. For elaborate distinction, see Galtung (1996).

⁴⁵ For elaborate criticism of liberal peace, see; Paris (2004).

⁴⁶ Arend Lijphart is probably the most influential scholar that has shaped alternative forms of democracy in ethnically and religiously divided societies. His ‘consociational democracy (1969)’ remains by far the most influential piece on peace processes and political power-sharing. See Chapter 5 for a detailed discussion of political power-sharing specific to Kenyan context.

aligned with both the government priorities and the community level needs.

Recent peace processes suggest a range of vertically integrated peacebuilding alternatives, especially in multi-ethnic contexts in which elements such as ‘local ownership’, ‘local alternatives’, ‘local peacebuilding’, ‘meaningful participation’, ‘indigenous peacebuilding’, or ‘post-liberal peacebuilding’ (Curtis, 2013). Key in these processes is the inclusion of key local stakeholders.

Notably known for its ethnic division and antagonism, the peace processes in Burundi perhaps best illuminates a local response to liberal peace in the form of power-sharing. Ethnicity no longer remains the most salient feature around which conflict is generated in Burundi (Curtis, 2013) as the peace processes acknowledged ethnic balancing.⁴⁷ The peace processes involved power-sharing across the elites from the historically disadvantaged majority Hutu and the dominant minority Tutsi and other completely marginalised groups.

However, despite power-sharing peace processes emphasizing ethnic diversity including in the security sector, the nature of the state hardly changes. For example, in Burundi, ‘the 2003 Global Ceasefire Agreement reconfirmed ethnic parity in the national defence forces, the national police and the intelligence services’ yet the ruling CNDD-FDD⁴⁸ ‘continues to consolidate its control of the country, including through the use of violence’ (Curtis, 2013, p.16-17). This is not unique to Burundi peace process alone but is evident in other contexts.⁴⁹ In Kenya for example, ‘Kikuyu and Meru continued to dominate domestic security, heading security ministry (via George Saitoti), the police force, NSIS and CID’

⁴⁷ Following local and international pressure following military reprisals 1988, President Pierre Buyoya, a Tutsi (1987-93) attempted a power-sharing formula by naming equal number of Hutu and Tutsi ministers in his 1988 reshuffle while Melchior Ndadaye, a Hutu, (1993) formed an ethnically balanced government to placate the dominant Tutsi who had hitherto controlled the economy and the military. Subsequent peace agreements under the Arusha Peace Process (1998-2000), the 2003 Global Ceasefire Agreement and the 2005 Constitution emphasised on the need for ethnic balancing.

⁴⁸ This is a former rebel organisation which transformed into a multi-ethnic political party and won democratic elections in 2005 and 2010.

⁴⁹ See for example Brown (2011); Magaloni (2008); Tull & Mehler (2005).

(Hornsby, 2012, p.775) while in Zimbabwe ‘security sector, the judiciary, and land policy remain a ZANU-PF preserve’ (Chitiyo, 2009, p.20), associated with President Mugabe. The literature on peace processes and power-sharing thus suggest that while ethnic diversity has occupied central location in the peace processes in multi-ethnic contexts, through inclusion of formerly marginalised ethnic groups in respective countries security sector, fundamental changes are hardly achieved in the short run because of vested political interests.

2.6 State of Security and Security Sector in Kenya

This section explores known literature on security sector reform dynamics and processes in Kenya before the post-election violence in the year 2007. It explores the reform that emerged from the perspective of both the state and various social groups and the subsequent conflict thereafter. It provides an account on how the state’s handling of the discourses on reforms set the stage for the reform initiatives and strategies adopted after the electoral violence witnessed in Kenya during the period 2007/8. More so, to fully appreciate the security sector reform discourse and process that emerged during the immediate post-electoral violence, understanding the preceding context of the 2007 general election is of utmost significance.

While appreciating the various contexts upon which security sector reforms take place, the uniqueness of reform cases come to bear in the Kenyan context, with the reform process exhibiting characteristics associated with the reform contexts described by Bryden and Hänggi (2004) in Section 2.3. The section is divided into two sub-sections.

2.6.1 Security and Security Sector under Moi Regime - 1978 to 2002

President Moi took over from Jomo Kenyatta (1964-1978), when Kenyatta died in August 1978. Moi was vice president for twelve years (1966–1978). President Moi’s grip on Kenya’s police force started way before he became the president. At Independence, in 1964, he was appointed Minister for Home Affairs and was in charge of the police. On appointment

as the vice president, he retained Home Affairs Ministry. Cumulatively, Moi 'was exposed to the structure and functions of the police force for fourteen years before he became president (Adar and Munyae, 2001, p.6). This exposure to Kenya's security apparatus provides the foundation for which the state of security and security sector in Kenya is presently understood.

During the prolonged Moi regime (1978-2002), the Kenya police force was infamous for all the wrong reasons. 'Throughout the 1980s to 1990s the security forces, particularly the police, were used to suppress any criticism of his regime' (Adar and Munyae, 2001, p.2) and were instrumental in cases of human rights violations, including politically motivated disappearances and targeted killing of many perceived opponents (Omeje and Githigaro, 2012, p.65). Cronyism and ethnicity pervaded the entire police spectrum while corruption was the order of the day. The police detained without trial opposition groups while anti-Moi media houses were under police surveillance.

Moi's first cabinet reshuffle was meant to gain control of the security forces and the civil service which were dominated by the Kiambu Mafia⁵⁰ (Adar and Munyae, 2001). In the reshuffle, Moi decided 'to remove control of the police and the provincial administration from Mbiyu Koinange' (Hornsby, 2012, p.331), and other senior police officers whose loyalty was doubtful. The purge also involved senior military officers from the Kikuyu community who were retired to pave way for loyalists and members of Moi's Kalenjin community⁵¹. Thus, the changes in the security sector that emerged during the formative stages of Moi rule was that of de-

⁵⁰ An elite group from President Kenyatta's home which dominated the political realm during Kenyatta's reign and whose objective was to undermine Moi's leadership.

⁵¹ An example in this case is that of meteoric rise of Lt-Col John Sawe in 1979 who was promoted to deputy army commander, creating a curious situation whereby a colonel commanded brigadiers. By the end of the year, the brigadiers under Sawe were retired and Sawe promoted to brigadier to head the army. (Hornsby, 2012, pp., p.335-336).

kikuyunisation to kalenjinisation⁵²- in this case, using the ethnic card to secure Moi's hold on to power.

To further ensure his grip on power, Moi systematically disregarded separation of power doctrine enshrined in Kenya's constitution by deliberately usurping the functions of the other institutions of governance including legislature and the judiciary (Adar and Munyae, 2001). This marked the beginning of Moi's authoritarian rule. Through a Constitution of Kenya Amendment Act, Number 7 of 1982, Moi introduced Section 2(A) transforming the country into a de-jure one-party state, reinstated the Chief's Authority Act, the Public Order Act, the Preservation of Public Security Act, the Public Order Act, and the Penal Codes which suspended individual rights guaranteed by the constitution. The right to obtain information from the Office of the President privilege by parliament was also revoked. Additionally, the provincial administrators who are civil servants were directed to get involved in the internal affairs of ruling party KANU. They were to review and clear party meetings throughout the country and to isolate dissenters. These developments legitimised internal security organs, notably the police and the provincial administration to be involved in the worst of all human rights abuses under Moi regime.

In the Judiciary, cases in which the executive had interest had to be in favour of Moi. Judges who did not favour the wish of the president were either transferred or resigned owing to the 1986 and 1988 constitutional amendment that provided for the removal of the security and tenure of the Attorney General, the Controller and Auditor General, the judges of the High Court and the Court of Appeal (Adar and Munyae, 2001).

The advent of multi-party politics perhaps signifies the beginning of reforms in Kenya's public and security system involving the police. Due to internal and external pressure for openness and competitiveness in

⁵² De-kikuyunisation and Kalenjinisation as used in this context refer to Moi's deliberate move to restructure the civil service and the state-owned enterprises, removing members of Kikuyu community who previously dominated these sectors during Kenyatta's regime and replacing them with members of his Kalenjin community respectively (Adar & Munyae, 2001).

politics, Moi grudgingly gave in to demands and repealed section 2(A) of the constitution thus giving way to multiparty elections in 1992. Moi argued that multiparty politics would 'cause chaos in the country because Kenya was not "cohesive enough"' (Adar and Munyae, 2001, p.6). This move had an impact on the security landscape in the country. It 'brought with it the dissolution of the state monopoly of violence by heralding the emergence of ethnic militias' (Omeje and Githigaro, 2012, p.66). Independent investigations during the time revealed that the police worked alongside and mobilised militia as forms of extra-state violence in areas where KANU faced opposition.

Whilst pressure on Moi yielded some positive results through the introduction of political pluralism and setting of presidential term limit, literature on reforms during Moi's regime provide evidence that they were not sufficient to guarantee security to the Kenyan people. Every reform initiative was countered by deliberate effort to consolidate control of the security sector by the regime.

2.6.2 Kibaki's Reform Agenda and the Security Sector - 2002 to 2007

The year 2002 was a watershed in Kenya's reform trajectory. With Moi not eligible to run after twenty four years in office, Kenyans overwhelmingly elected Mwai Kibaki, defeating former president Moi's preferred candidate Uhuru Kenyatta. During his inauguration, Kibaki announced that the 'era of roadside policy declarations is gone' and assured Kenyans he would 'bring back the culture of due process, accountability and transparency in public office' (GoK, 2002). With this declaration, there was 'hope and great expectation in the security sector that KPF would among other things be reformed and professionalized to be able to deliver efficient and productive policing' (Omeje and Githigaro, 2012, p.65).

The government initiated the donor funded sector wide reform initiative under GJLOS, which was the most 'extensive SSR process that targeted the Kenya Police in particular' (ICTJ-Kenya, 2010, p.1). A taskforce on

police reform was set up in 2004, and parliament changed the law so that only confessions made in court were admissible, to reduce the use of torture to extract confessions (Hornsby, 2012, p.714). The goal of the police reform process was to transform the institution into an effective, efficient, human rights-compliant, people-oriented, and accountable institution (ICTJ-Kenya, 2010). The reform prioritised the improvement of policing and security as fundamental prerequisites of economic growth. This was also articulated in Kenya's Economic Recovery and Wealth Creation Strategy (2003), and later Vision 2030⁵³ which considered security as a foundation of the pillars of the vision. As a result, there was a relative increase in police funding to improve their terms of service and operational capacity. Community policing which sought to include the public in local policing was also given prominence.

Whilst there seemed to be some accountability in the security sector compared to Moi's tenure, the NARC dream did not last long. Internal problems due to perception that Kibaki did not honour a pre-election MoU with Raila Odinga impacted negatively on the reform process.⁵⁴ 'Some appeared to believe that their preferment owed as much to Odinga as Kibaki' (Hornsby, 2012, p.712), while Kibaki systematically consolidated power through a political elite from Gema communities, more often described as the 'Mount Kenya Mafia' (Hornsby, 2012).

The sacking of the then police chief perhaps signalled earlier attempts by Kibaki to consolidate control of the police. After serving for only a year, Edwin Nyaseda, perceived to be a close ally of Raila Odinga, was sacked after 'he provided state security for Odinga during a mixed official and political visit to the Coast' (Hornsby, 2012, p.712). By 2006, the Gema communities took control of the entire internal security; the permanent secretary for internal security, the CID director, GSU commandant, Presidential Escort and NSIS heads, previously held by the Kalenjin, – all Kalenjin in 2002-were all Kikuyu, Embu and Meru' (Hornsby, 2012,

⁵³ This is Kenya's economic blueprint for economic development.

⁵⁴ In the run-up to 2002 election, various parties under the banner National Rainbow Coalition (NARC) entered into a memorandum of understanding in which the position of executive prime minister would be created for Raila Odinga.

p.713). Notably, during Kibaki's entire tenure, all the four CID directors were from Kikuyu community. The military too underwent reshuffles with the overall effect 'to retire or side-line the most senior Kalenjin and Luo and increase Kikuyu (and Kamba) representation' (Hornsby, 2012, p.713).

The judiciary too underwent what became known as 'radical surgery'. The then Chief Justice Bernard Chunga, a Luo, resigned and was replaced by Evan Gicheru, a Kikuyu. In October 2003, the state suspended from office 23 judges and 82 magistrates, nearly half of the judiciary, following investigations by Aaron Ringera (Meru) that made shocking allegations of illegal and unethical behaviour (Hornsby, 2012, p.705). While judicial reform was one of the most notable achievements of the NARC government during the formative stages, 'there were allegations of politicisation and tribalism in the appointment of NARC-era judges as well (Hornsby, 2012, p.705). The above developments in relation to SSR that emerged during Kibaki's' first term indicate a systematic de-kalenjinisation⁵⁵ of the security sector and the entrenchment of members of Gema community in public service. By the year 2007, ethnic composition of Kenya's public institutions supported the allegations of tribalism with key institutions notably finance and security dominated by members of president Kibaki's Gema communities.⁵⁶

Whilst Kibaki's first term succeeded in exposing blatant disregard for the rule of law during the Moi regime, evidence from the literature indicates that nothing much changed. The security system failed to address the security challenges and was also accused of complicity in crime, and in particular the 2007 post-election violence, thus raising questions about commitment to reforms (Manby, 2008).

The trajectory of reform processes in Kenya prior to the 2007 general election reveal different reform contexts discussed in Section 2.3. The period under Moi was characterised by authoritarianism in which the police and the judiciary were used to silence those critical of Moi's

⁵⁵ See; (Hornsby, 2012).

⁵⁶ See Chapter 3 for elaborate discussions on ethnicity during Kibaki's first term.

government. During this period, 'the image and reputation of the police was at its lowest ebb in the post-independence history' (Omeje and Githigaro, 2012, p.65). President Kibaki's first term mimics developmental context with the realisation that security was vital for development hence inclusion of security as a pillar of Vision 2030. In fact, 'Kenya's economy is yet to recover from the slump that followed the disputed 2007 elections, with economic growth dropping from 7.1 per cent in 2007 to 1.5 per cent in 2008' (Karambu, 2012). There was increased investment in reforms in security agencies through capacity building, improvement in operational logistics and improvement of welfare of personnel.

While the reform processes that emerged during the period 2003-2007 were fairly impressive, vested political interests undermined the police and justice system, thus facilitating the on-set of the post-election conflict in Kenya (ICPC, 2011). These developments raise questions about the responsiveness of the reform processes to policing and public security needs and whether the reform processes that emerged during Kibaki's first term were founded on solid base that would guarantee security and safety of Kenyan citizens. Again, how did the political dalliance with the security sector during Moi and Kibaki's first term affect the police reform processes that emerged in the immediate post 2007 election violence period to date? These questions are addressed in Chapter 3.

2.7 Justification for Overall Research Strategy

The literature reviewed so far suggests a number of implications for choice of methodology and methods outlined in chapter one. First, the discussions reveal that the concepts underlying this study are existentially contested. Primarily the meaning of security, security sector reform and post-conflict, which are key concepts in this research, remain in dispute, and so impact on the overall assessment of police reform under the wider SSR processes. How these concepts are thus defined determine the priority choices for SSR in different situations. In our discussions of these concepts in Chapter two, we have offered operational definitions of these key concepts.

Secondly, SSR is a complex process involving multiple actors, each pursuing different interests, either in the short or long-run. How these actors interact to shape SSR is critical, in terms of the direction of reform. In other words, whose agenda prevails in a politically charged police and SSR processes? This question thus informed the people selected to participate in the study.

Thirdly, whilst SSR takes place in different contexts, the process of police and security sector reform in post-conflict situations seem dominant and more complex. Post-conflict situations, though offering a window of opportunity for police and SSR, equally present the most difficult and challenging environments for police and justice sectors reform. These three key lessons, and a lot more embedded concerns, about police and SSR processes in transitional post-conflict situations naturally point towards two observations: that as an object of study for this research, police and SSR in post-conflict situations is complex; and that knowledge of such a complex process requires a critical approach to the social phenomena of security. With this in mind, this section justifies the research approach as well as methods in the context of reviewed literature in the previous sections of this chapter.⁵⁷

2.7.1 Research Strategy

The research strategy for this study is engendered in the thesis outline presented in chapter one. This is reflected in chapters three, four and five of this study. The chapters provide substantive analyses of the data collected in relation to the research question. This study contributes knowledge to wider SSR literature in transitional and post-conflict contexts. Therefore, a thorough understanding of existing literature in this area was important. For this reason, chapter two of the study is designed to anchor Kenya's SSR, particularly police and justice reform, into the wider SSR debates. Specifically, three literature areas; security sector reform processes in transitional post-conflict contexts; political aspects of

⁵⁷ The section primarily concerns with the providing a justification for the methodology and methods already presented in chapter one.

SSR; and efficacy of security sector reforms to policing and community needs form literature themes

Having located the Kenyan case within the broader SSR literatures and debates, it was necessary to provide a detailed analysis of post-2007 aftermath in terms of how the post-conflict security sector reform agenda was set in Kenya. This strategy is informed by the fact that the way agendas get set is critical to the implementation process (Jenkins-Smith and Sabatier, 2003, Sutton, 1999). To achieve this strategy, chapter three explores the literature on agenda setting theory to provide an appropriate framework for discussing how Kenya's security sector reform agenda was set. For the purpose of analysis in this chapter, John Kingdon's policy streams model (Kingdon, 2002) is used to explain how the security sector reform agenda was constructed in the post-2007 Kenya.⁵⁸

Having analysed, in detail, the post-2007 security sector reform agenda, examining the progress in the implementation of police reform agenda, in terms of emerging debates, disputes and progress was critical. Whilst this was possible by simply describing the implementation process, our best option for achieving this strategy was to understand why and how different actors involved in the reform process, behaved in a particular manner in relation to the implementation process. This strategy helped clarify why certain police reform priorities turned out as such in their implementation. For this reason, chapter four examines in detail the development of the police and justice reform agenda since the 2007 to the present, scrutinising the objectives of the actors involved and contrasting the factual situation on the ground with the officially approved police/SSR agenda as espoused in the Report of the National Taskforce on Police Reform (GoK, 2009).⁵⁹

⁵⁸ Kingdon argues that agenda setting is influenced by *participants* and the *processes by which agenda items and alternatives are generated*. The interactions of processes (streams) including; problems, policies and politics creates a *window of opportunity* through which change emerges. These debates are further clarified in Chapter 3.

⁵⁹ The taskforce was formed in May 2009 to provide direction for police reforms. Its report provides an outline of recommendations of police reform in four broad areas

As argued by a number of scholars (Nathan, 2008, Wulf, 2011), police reform and SSR processes are extremely political. How these might manifest in Kenya was interesting especially given the fact that while power-sharing has become a critical tool in resolving conflicts, little has been done in relation to the interactions between the politics of power-sharing and security sector reform in transitional and post-conflict contexts. The strategy here is to explore how police and justice reform processes in Kenya might have been facilitated or constrained by the power-sharing agreement in Kenya since 2008. Chapter five reflects this strategy by assessing this interrelationship based on Arend Lijphart's framework of 'Consociationalism' (Lijphart, 2008), exploring the extent to which elements of consociation affect police and justice reform processes during the lifespan of power-sharing government in Kenya.

Literature review also largely reveals that as a normative concept, SSR seeks to improve efficiency in provision security amongst members of the public. As such, having analysed how the security sector reform agenda was set in Kenya and explored its progress in implementation process, it was important to assess the outcomes of these reform initiatives. The strategy here is to present findings relating to the extent to which police reform responds to policing and security needs of the Kenyan population, as much as providing impact lessons for police reforms in post-conflict settings. Whilst multiple interpretations of security and security sector reform priorities were anticipated, our focus was however limited to those aspects that were key to the focus of our inquiry - those that related to the post 2007 police reform process.

Having understood how the post 2007 reform agenda was constructed, analysed the implementation processes involved and demonstrated the interrelationship between power-sharing politics and security sector reform process in Kenya, it was then necessary to state the thesis contribution to knowledge. Chapter seven fulfils this strategy by summarising the findings of the substantive research chapters against the

namely; police accountability, professionalism, operational and administrative reforms, and institutional policy and legislative reforms.

primary research question and reviewed literature. This is concluded by recommendations of areas for further research.

2.7.2 Paradigm of Inquiry

This research examines complex phenomena that attract multiple interpretations from scholars and practitioners. These directly link to questions relating to ontology and epistemology, and determine the research approaches employed in this study.

Ontological questions invite us to consider the nature of social phenomena - 'are they relatively inert and beyond our influence or are they much a product of social interaction?' (Bryman, 2012, p.6). Put differently, are SSR processes 'objects' out there - external to the researcher - to be studied or are they products of social constructions involving multiple players, including the researcher? Two ontological positions, objectivism and constructionism explain these questions. Objectivism 'asserts that social phenomena and their meanings have existence independent of social actors' (Bryman, 2012, p.712) while constructionism holds that 'reality is socially constructed, that is, the phenomena of the social and cultural world and their meanings are created in human social interaction' (Robson, 2011, p.533).

Epistemology on the other hand is concerned with knowledge and entails understanding and making sense of the world, that is, how we know we know (Crotty, 2010). As with ontology, two epistemological extremes - positivism and social constructivism- permeate social science. These are reflected in the paradigms (Corbetta, 2003, Guba and Lincoln, 2005) or world views (Creswell, 2007). Positivists argue that objective knowledge is gained through direct experience and observation. They therefore propose scientific methods of inquiry which guard against any subjective endeavour. On the other hand, social constructivists hold the view that our understanding of social phenomena is socially constructed, and allow for multiple interpretations of the social phenomena. Under this precept

therefore, security and security sector reform which is the object of study in this research is socially constructed.

This research is based on a pragmatic paradigm that seeks to make the best out of the two paradigmatic extremes and best for answering the research question in this thesis.⁶⁰ This perspective is critical as it preserves the useful knowledge from both sides, while at the same time offering a distinct alternative approach to social sciences (Danermark et al., 2002). The flexibility of pragmatic paradigm is its ability to be used across different research communities.⁶¹ Though biased more towards social constructivism, the pragmatic approach used here underscores the mixed-method approach, also called critical methodological pluralism (Danermark et al., 2002). This position implies three things for this study: that the idea of the society on what constitutes security and SSR is important in as much as, or more than the material structure of the state as referent object of security. Secondly, the interest of the public informs their identity and thus determines their reaction to SSR and finally that security and reforms are negotiated constructs influenced by the interactions between the public and the state.

2.7.3 Theoretical Framework

Two options, post-conflict peacebuilding and liberal democracy were considered in selecting suitable analytical framework for the primary research question in this study. The two options primarily came into consideration as SSR literature, especially formative ones; and earlier reform initiatives favoured the two approaches. In the case of the former for example, it is documented that by the year 2005, 'thirteen out of 17 post-conflict peacebuilding missions worldwide included a police

⁶⁰ The concern under the pragmatic paradigm is '*what works*' and solutions to problems. Using this worldview involves the use of *multiple methods* of data collection to best answer the research questions, employment of *both quantitative and qualitative* sources of data collection, focuses on practical implications of the research and emphasizes the importance of conducting research that best addresses the research problem. For more details see Creswell (2007, p.22-23).

⁶¹ For detailed discussions on how case study researches and ethnographers mix quantitative and qualitative data under pragmatic paradigm, see Yin (2008) and LeCompte & Schensul (2010).

component, tasked with creating, reforming, training and/or monitoring domestic police forces' (Stodiek, 2008, p.6).

However, initial assessment of the Kenyan situation, within the wider debates of political transitions,⁶² revealed some deficits in using democracy and peacebuilding as framework for analysing successful SSR processes. For example, while liberal democracy embodies the broad conceptual dimensions of SSR, notably democratic oversight, control of the security forces, local ownership of SSR process and therefore suitable for analysing SSR processes within the context of political transitions (Friedrich, 2004), it is limited when applied to the complex nature of police reform process in Kenya. The issues involved in Kenya go beyond democracy criteria.⁶³ Additionally, evidence as with SSR processes in Ethiopia, Cuba and China, suggests that there are instances where SSR processes do not necessary link with democratisation agenda. Explaining these SSR processes against democracy and peacebuilding frameworks would therefore be self-defeatist.

Against the backdrop of the above deficits, three assumptions informed the decision not to adopt liberal democracy and peacebuilding. First, while a plethora of articles and reports on SSR abound, there is a lack of clear and systematic framework for assessing police/SSR processes in post-conflict societies. Secondly, police reform in Kenya is complex and multifaceted, involving many actors under the wider SSR and public reform. Liberal democracy and peacebuilding approaches that are dominant in the SSR literature would thus limit the options for analysing police/SSR in Kenya. Finally, very little academic literature on police reform in Kenya exists under the time frame (2008 - 2014) considered here.

Though developed as a strategy for overcoming challenges of research in situations of conflict, the 'composite approach' (Barakat et al., 2002) presents the ideal framework for critically analysing what is going on in

⁶² See Section 2.2.4.

⁶³ See Section 2.3.4 for the deficits of liberal democracy as a framework for analysis of SSR.

terms of police reform processes in Kenya. The approach involves 'the use of multiple sources and methods in response to changing conditions', while at the same time 'integrating various theories on local circumstances and their applicability to a particular case' (Barakat et al., 2002, p.996). Composite approach is consistent with the mixed methods employed in this research. It not only provides an opportunity for in-depth and focused understanding of the key issues involved in police reform process in Kenya, but also provides for triangulation on understanding police and wider SSR processes.

2.7.4 Mixed methods

The rationale for adopting mixed methods in this study is for the purpose of 'providing a more complete picture' and help in 'developing the analysis' (Denscombe, 2010, p.152) of police/SSR processes in Kenya. The qualitative approach allows for greater insights into the security sector reform processes in Kenya while quantitative approach provides opportunity to 'enhance the rigour of the research' (Robson, 2011, p.158) and provide an empirical grounding upon which the reform context is understood in Kenya.

Qualitative methods have been chosen primarily for their suitability in providing an opportunity to 'understand phenomena in their setting' (Robson, 2011, p.19). Since SSR literature supports the recognition of the context in which police reform takes place and acknowledges multiple interpretations of the concepts of security and security sector, qualitative methods remain important in describing police/SSR processes as constructed within the social contexts of actors involved.

The quantitative methods in this research seek to provide perceptions based approach (Zyck, 2011) to determining the responsiveness of SSR in relation to the fifth research question, that is, how the citizenry articulates its preferences and the capability of the reforms to meet their demands equitably (Krause and Williams, 1996). It also helps address the dearth of empirically grounded studies in SSR (Egnell and Haldén, 2009)

while at the same time providing the base upon which qualitative methods derive. This provides for triangulation- 'strategy involving the use of multiple sources to enhance the rigour of the research' (Robson, 2011, p.158).

2.8 Conclusion

This chapter examined three literature areas upon which this research is situated and provided a justification for methodology and the overall research strategy for analysing the issues related to the research question. While there were multiple options through which this could be achieved, the research strategy applied not only serves as a way to organise the discussion, but also worked for the researcher. The section has also discussed the pre-2007 reform agenda as the basis for discussing the reform agenda that emerged after the 2007 post-election violence in the Chapter 3.

CHAPTER THREE

SETTING THE POLICE REFORM AGENDA IN KENYA

3.1 Introduction

An agenda setting process is often complex and is usually contested due to competing interests (Eustis, 2000). Despite the complexity and contestations, scholars and policy practitioners concur that the ways agendas are set remain critical to the development and implementation process of any programme. This is more so in the immediate post-conflict situations where ‘achievement of successful policy outcomes can be seen as being even more crucial in such states given the potential to revert to violence as a result of policy and associated failures’ (Thakur and Best, 2008, p.2). In a power-sharing context with a strong SSR agenda, the implementation of the SSR agenda is more likely to be fairly progressive, albeit with contestations (Noyes, 2013), than where SSR agenda is weak in content in the agreement.⁶⁴ Thus there would be no doubt that competing interests and contestations witnessed during the Kenya National Dialogue and Reconciliation Process paved way for the security sector reforms. These contestations would also be reflected in the implementation of the police and justice reform processes in Kenya.

An investigation of security sector reform process in Kenya raises fundamental questions on how the post-2007 police reform agenda was constructed, how agenda setting impacted and influenced the choices, priorities and the path of the police reform package. For example, within the context of the primary research question, ‘how have security sector reforms, particularly police reforms, in Kenya developed since 2007 and how, and to what extent, have they been shaped by Kenya’s wider political transitions and SSR process during this period?, a number of questions can be developed, thus; To what extent, and how did the post-election violence influence the security sector reform agenda process?

⁶⁴ The security sector reform agenda in Kenya was more explicit and stronger in Kenya’s National Accord as compared to the content of security reform in the Global Political Agreement (GPA) of Zimbabwe. This explains the relative progress made in Kenya as opposed to Zimbabwe. For more details, see; Noyes (2013).

Whose agenda prevailed in the post 2007 reform process? What is the contribution of various actors notably the political elites, international community, interest lobby groups, media and public opinion in the setting of the reform agenda process that emerged after the 2007 post-election violence? Why did reform of the police and judiciary become top agenda issues in Kenya's post 2007 transitions? These questions are best answered by exploring literature on agenda theories with a view to selecting the best framework for analysing what transpired in the setting of SSR agenda in Kenya after the 2007/08 post-election violence.

3.2 Agenda Setting Theories

Over the years, several theories and frameworks have been proposed to improve our understanding of how agenda are set. These are significantly traced to the American tradition, including particularly the works of Schattschneider (1960), Bachrach and Baratz (1962) and Cobb et al. (1976).

Some of the theories and frameworks that have emerged out of these classic works include Advocacy Coalition Framework (ACF) (Sabatier, 1998) that posits that agenda setting process is a competitive undertaking in which actors form coalitions based on the beliefs they hold and advocate for different positions within a policy subsystem (Thakur and Best, 2008). ACF is not only concerned with agenda formation but also 'deals with the entire policy process rather than just agenda-setting' (Eustis, 2000, p.17).

Issue Attention Cycle (Downs, 1972) examines agenda setting in terms of citizens' attention to problems in different five stages. The pre-problem phase exists when a problem exists yet people have not given much thought to it. As a result of some dramatic event, for example post-election violence in the case of Kenya, the problem gets into the second phase where the public suddenly becomes aware of and alarmed by the problem. This alarm creates enthusiasm (the third phase) to solve the problem, in which the public pressures authorities to act. The fourth phase is the realisation that the cost of addressing the problem could be too high

thus leading to gradual loss of interest in the issue. Finally, in the fifth phase, post-problem phase, an issue that had been the subject of public interest 'moves into a prolonged limbo' (Downs, 1972, p.39-41)⁶⁵

Baumgartner and Jones (1991) examined the interactions of the policy image and venues for policy action⁶⁶ of the United States civilian nuclear policy. In their analysis, they developed Punctuated Equilibrium Theory, arguing that long periods of policy stability could be changed dramatically through a short period of critical mobilisation. Their analysis underscores the significance of multiple and competing venues overturning what appears to be 'powerful system of limited participation' (Baumgartner and Jones, 1991).

In his ground-breaking work, *Agendas, Alternatives and Public Policies*⁶⁷, John Kingdon, focused on problems in the health and transport sectors in the federal government in the US over the period 1976 to 1979. Kingdon's analysis developed what became known as Multiple Streams Theory (Kingdon, 2002) which focussed on three streams; problems, policies and politics in the setting of agenda.⁶⁸ Other contributions to agenda setting literature include Institutional and Analysis Development (IAD) framework (Ostrom, 2008), Problem Definition (Stone, 1997), and Issue Definition (Cobb and Elder, 1971).

Based on the above theories and frameworks, a number of studies have emerged. Building on the works of Kingdon (2002) and Baumgartner and Jones (1991), Eustis (2000) tested the applicability of agenda setting theories, in assessing the 1996 Telecommunications Act in the United States of America. Scheufele and Tewksbury (2007) on their part examined the effects of news framing, agenda setting and priming on the mass media industry. Yet a more relevant work to Africa and particularly

⁶⁵ For further clarification of the phases, see; Downs (1972, p.39-41).

⁶⁶ Policy images refer to the interaction of beliefs and values of a particular policy, while the venues for policy action refer to the existing set of political institutions. For further clarification on this, see Baumgartner & Jones (1991).

⁶⁷ Kingdon's, *Agendas Alternatives and Public Policies* first appeared in the 1984. For the purpose of this study, reference is made to the second edition of the book published in 2002.

⁶⁸ Multiple Streams' Theory is developed in subsequent sections of this chapter. For thorough discussions on the other theories see, Eustis (2000).

to post-conflict situation is the work of Thakur and Best (2008) which explored agenda setting within the telecommunication sector in post-conflict Liberia. Fundamental to these perspectives is the constructivist approach they employ, in which they 'focus on the dynamics by which new ideas, new policy proposals, and new understandings of problems meet resistance from the prevailing political arrangements but sometimes break through to create dramatic policy changes' Baumgartner et al. (2006, p.1). This chapter, while acknowledging several elements of agenda-setting theories, analyses the setting of post-2007 security sector reform agenda in Kenya using Kingdon's Multiple Streams Model (Kingdon, 2002).

3.3 John Kingdon's Multiple Streams Theory

Kingdon (2002) considered agenda in relation to government to mean 'list of subjects or problems to which government officials, and people outside of government closely associated with those officials, are paying attention to at any given time.' He goes on to argue that apart from the subjects and problems on the agenda, there are a set of alternatives to the problems that might require serious consideration. As such, the distinction between agenda and alternatives, though not distinctly very sharply drawn, remains analytically important.

John Kingdon builds his agenda setting theory on two categories, namely; 'the participants who are active, and the processes by which agenda items and alternatives come to prominence' (Kingdon, 2002, p.15). He further categorises participants into two, thus; participants on the inside of government and participants outside of government⁶⁹ while the processes include three streams of processes namely; problems, policies and politics.

Each of the participants variably affects the setting of the agenda depending on; (1) the participant influence agenda setting in terms of the

⁶⁹ See Kingdon (2002, p.21-70) Inside of government participants (administration) include the president, presidential staff, political appointees and civil servants while participants outside government include interest groups, academics researchers, media, political parties and the public.

importance of each participant,(2) the ways each participant is important(e.g. whether each affects agendas, alternatives or both),and (3) the resources available to each participant' (Kingdon, 2002, p.21). The three streams on the other hand, are independent of one another and each develops on its own dynamics and rules, but converge at certain critical times to create 'policy windows' (Kingdon, 2002, p.20) out of which policy changes emerge.

In Kingdon's conceptualisation, windows of opportunity are opened either by compelling problems or the happenings in the political stream or interactions of both. In other words, 'solutions become joined to problems, and both of them are joined to favourable political forces' (Kingdon, 2002, p.20). However, this coupling or packaging (of problems, solutions, and politics) does not just happen (Porter and Hicks, 1995) but is the result of sustained effort of the stakeholders including policy makers.

While other theories would sufficiently explain the SSR processes in Kenya, this research employs Kingdon's Multiple Streams Theory for a number of reasons. It is one of the often cited agenda setting theories (Eustis, 2000) alongside the Punctuated Equilibrium Theory (Baumgartner and Jones, 2009). Its pragmatic nature makes it fit within the overall research strategy in this thesis. It does, within this context, consider the interactions of various contributing factors to the process of agenda-setting including the interests of the president, the prime minister, members of parliament, the media, interest group pressure (both local and international) and political parties amongst others.⁷⁰ Additionally, it emphasises contextual issues that relate to timing and flow of policy making and implementation thus providing a bigger perspective. Kingdon's approach thus provides a flexible germane framework through which the different factors that came into play in Kenya can be analysed. It allows the researcher to manage the situation of multiple agendas that emerged after the 2007 general election, whether the public agenda or government agenda and help analyse how the process moved forward.

⁷⁰ Note that these are participants within the Kenyan context and may be different from the US context in which Kingdon's study was based.

Alongside Kingdon's theory, other frameworks are mentioned for the purpose of providing a broader paradigm of inquiry.

3.4 Electoral Violence and SSR

Discussions linking electoral violence and SSR in Kenya are critical as the post 2007 security sector reform agenda considered by this study was triggered by a post-election violence. In short, (post)electoral violence, specifically the 2007/8 postelection violence provides the locus around which this thesis revolves. The 2007 general election was the fourth since the introduction of political liberalisation in the 1990's. The first election under political pluralism was conducted in the year 1992. Five elections have since been undertaken, four of which have been held after every five years, between 1992 and 2007, while the fifth one, held in March 2013 was slightly over five years.⁷¹

A common denominator in Kenya's electoral history is violence (Orwenjo, 2014). The 1992, 1997 and 2007 are classical cases, the only difference being that police involvement in the latter brought security sector reform agenda to the table while the previous elections did not. Over 1,100 people were killed and 350,000 driven from their homes in Rift Valley in 1992 (Brown and Sriram, 2012) while in the 1997 elections attacks, though less, took place at the Coast before the elections and in Rift Valley afterwards. Investigations into the 1992 and 1997 electoral related violence generally pointed to state-induced violence meant to intimidate and disenfranchise people so they do not vote in places they were considered not historically indigenous.⁷²

On the contrary, the 2002 general elections heralded a new beginning, popularly known as the 'Narc dream'⁷³ with the exit of Moi from the presidency. This 'new beginning' was however short-lived, and culminated

⁷¹ The 2013 elections were held on March 4, 2013, about three months beyond the traditional five year cycle in Kenya. This was due to delays in preparations for the elections. For an elaborate account of delays in the preparations for the 2013 general elections, see; Barkan (2013).

⁷² See for example; Nowrojee & Manby (1993); Kagwanja (1998); Anderson & Lochery (2008); Akiwumi (1999).

⁷³ See GoK (2002); Hornsby (2012).

into the 2007/08 post-election violence with the police being significantly blamed for ineptitude, while the judiciary was perceived as not independent by the opposition.

The 1992 and 1997 elections however are particularly important in this thesis with respect to analysing security sector reform agenda. Moi won these elections in a questionable manner. It is for these malpractices that scholars widely agree that Moi regime never fought and won a clean election (Otieno, 2002). Whilst the ruling party KANU offered some concessions, largely due to the developments both locally and globally, for example introducing political pluralism in the run up to 1992 elections, 'the leadership still made use of the law and the security forces to repress their critics' (Hornsby, 2012, p.497).

Despite the negative role of the security sector in the 1992 and 1997 electoral violence, and the widespread lack of public confidence in the judiciary and the police during the period, security sector reform did not feature significantly as an agenda issue for the government until after the 2007/08 post-election violence. The violence ignited the debate amongst the Kenyan public that 'police reform is necessary and urgent' (sic) (The World Bank, 2009). Why, and how did security sector reform become an agenda item after the 2007 general elections and not in the previous elections, which were largely characterised by state security sponsored violence?

According to the Multiple Streams Theory, three processes - problem recognition, generation of policy proposals, and political events⁷⁴ can serve as impetus or constraint in promoting items into higher agenda prominence (Kingdon, 2002). These, he argues, coupled with the actions of participants in order to bring change. These phenomena might help explain why security sector reform failed to rise to government agenda despite being a priority amongst members of the public.

⁷⁴ These make the three streams in Kingdon's conceptualisation.

In the case of Moi, the 'Change the Constitution' debate in late 70's,⁷⁵ attempts to undermine his rule by the political elite from Mt. Kenya region and the 1982 attempted coup by the Kenya Air Force (KAF) (Hornsby, 2012, Branch, 2011) created a window of opportunity for him to entrench his rule in the security sector.⁷⁶ He systematically altered the roster of participants,⁷⁷ replacing them with appointees sympathetic to his cause, for the purpose of achieving the most favourable security sector policy venue for his agenda, while at the same time suppressing the agenda of those opposed to his rule.

In Kingdon's' conception of participants, the administration⁷⁸ plays significant role in agenda setting. Kingdon adds that 'when the administration considers a given issue a top priority item, many other participants do too' (Kingdon, 2002, p.21). Even within the administration, no other actor has quite the capacity to set the agenda as the president. Kingdon's interviews confirmed that 'the president can singlehandedly set the agendas, not only of people in the executive branch but also of Congress and outside of government' (Kingdon, 2002, p.23). The president is pre-eminent in agenda setting because of the institutional resources at his disposal, e.g. the right to veto and the power to hire and fire, the organisational resource, i.e. as a unitary entity, decision making is fast in the executive and given the fact that the president commands public attention so his agenda proposal is likely to be adopted as a command.⁷⁹ Further, he found out that 'political appointees elevate issues from their own agencies, but they also arrive at some of their priorities from their interactions with the White House' (Kingdon, 2002, p.29). This

⁷⁵ 'Change the Constitution' debate was started by the Kikuyu elite before Kenyatta's death ostensibly to lock Moi out of Kenyatta succession. For these discussions see (Hornsby, 2012, pp., p.323-330).

⁷⁶ See the debates on '*de-kikuyunisation*' to '*kalenjinisation*' in '*Security and security sector under Moi regime -1978 to 2002*' in Chapter 2 of this thesis.

⁷⁷ Altering rosters in this context means replacing political appointees in such institutions. For further clarification, see the debates on *policy image* and *policy venue* in F. Baumgartner and Jones (1991).

⁷⁸ The administration as used in this context includes; the president, presidential staff, presidential political appointees and civil servants.

⁷⁹ The arguments about the president's predominance in agenda setting are eloquently addressed in Kingdon (2002, pp., p.26-29).

begs the question; what was Moi's agenda within the police and the wider security sector, if the public agenda for reform was not prioritised?

President Moi's towering image over the security sector did not allow for independence of the police and the judiciary. He exercised presidential resources of veto and power to hire and fire at will. This was the only sure way in which he would deal with dissenting voices and gain foothold of the country. This argument is supported by the literature on agenda setting processes. First, agenda setting literature confirms the president's predominant role in an agenda setting process (Kingdon, 2002). This is especially so under imperial and authoritarian presidency. Upon assuming the presidency, Moi 'began to systematically institute an authoritarian and oppressive one-man state rule' (Adar and Munyae, 2001, p.2). Secondly, presidential appointees who by virtue of their position control the policy venue (Baumgartner and Jones, 1991) would dare not consider agenda they knew would not get presidential support. Political appointees under Moi would dare not raise the debate about security sector reform as it was not in the interest of the president to entertain such debates.

That police and justice reform, within the wider security sector reform agenda failed to be prioritised by Moi government highlights the lack of political will often considered a crucial element in the agenda setting process (Kingdon, 2002, Baumgartner and Jones, 1991). The agenda of self-preservation reigned dominant and remained averse to security sector reform under Moi. The judiciary surrendered to the whims of the executive, in what Abdullahi (2011) calls 'lost decades of the Kenya's judiciary' and was understaffed by design, thus restricting access to justice to the Kenyan population. Over the years, the Kenyan public lost faith in the justice system and so the judiciary became a target of debate for reform under the wider institutional reform.

The 2002 general elections were peaceful. In the words of (Baumgartner and Jones, 1991), it was a single dramatic event (Kibaki's election) that provided 'a window of opportunity' (Kingdon, 2002) for reform, and reignited the hope of reversing the 'lost decades' (Abdullahi, 2011). Kibaki established the Ministry of Justice and Constitutional Affairs, appointed a

new Chief Justice and embarked on pursuing the reform agenda under Governance, Justice, Law and Order sectors (GJLO's).⁸⁰ Major General Hussein Ali was also poached from the military to steer the reforms in the police sector.

The newly appointed Justice Minister and the Chief Justice focused on the president's priorities that sought to address historical legacies of the Kenyatta and Moi regimes. There was an attempt to secure independence of the judiciary through severing links with the executive, and increasing the number of judges (Makoloo and Kichana, 2005, Islam, 2003) and more significantly the 'radical surgery of the judiciary' in which 26 judges of the High Court and the Court of Appeal retired from the judiciary on impropriety allegations (Abdullahi, 2011). Whilst these projected a positive image of the judiciary in the short run, the coupling of these processes were not sufficient enough to provide an agenda for which a total break with the past could be achieved.⁸¹ In this view, scholars have argued that Kenya's transition was not complete (Brown, 2011, Shilaho, 2013). Brown (2011, p.2) for example, described Kenya's transition as 'lacking the solid break with the past that has occurred in such places as Bosnia and Herzegovina or Sierra Leone'.

Others, for example Abdullahi (2011), argue that the measures undertaken in the pre-2007 reform agenda in the justice system were principally as a result of temporal political goodwill on the part of the executive and were not the result of well thought out enduring policies. The judiciary failed to come to terms with the magnitude of the problem or admit how deeply its problems were entrenched. This failure to appreciate the magnitude of the problems undermined the feeble remedies proposed and implemented by the executive. Within Kingdon's; politics, problems and policies streams therefore, it may be reasonable to argue that the coupling (Kingdon, 2002) of the three streams was not strong enough to

⁸⁰ Kiraitu Murungi, a Harvard trained lawyer and a critic of president Moi, was appointed Minister for Justice while Justice Evan Gicheru, a long serving Appellate Judge was appointed the Chief Justice.

⁸¹ Note the interactions involving problems, policy and politics (Kingdon, 2002).

open up a window of opportunity for the setting up of genuine security sector reform agenda until after the 2007 post-election violence.

3.5 Towards Normalcy: The Kenyan National Dialogue and Reconciliation Process

The Kenyan National Dialogue and Reconciliation Process (KNDRP) is critical to Kenya's post-2007 police reform within the wider public reform agenda. As a first step towards returning Kenya towards normalcy,⁸² the intervention by the international community was swift and helped a great deal in putting pressure on the parties to the conflict to reach an amicable solution (Brown, 2009). The visit by John Kufuor, the African Union's chairperson, during the period January 8-10, 2008 marked clear intentions that the international community would not let Kenya's post poll violence degenerate into unprecedented proportions. The Kenya National Dialogue and Reconciliation Process (KNDRP), under the guidance of the Panel of Eminent Personalities⁸³ and four representatives each from Kibaki's PNU and Odinga's ODM, was formed to reconcile the sides in the electoral dispute. The negotiations began on 29 January, 2008 through the Kenya National Dialogue and Reconciliation Committee. By February 1, 2008, the negotiation teams had agreed on agenda items to be discussed. Priority was given to immediate cessation of violence, addressing humanitarian crisis and overcoming the political crisis. Specifically, these entailed Agenda One to Three.⁸⁴

In the framing of KNDRP agendas, cessation of violence, addressing humanitarian crisis and overcoming the political crisis were given prominence before the long-term reform agenda, under which security sector reform belonged. The first two essentially relate to short term

⁸² Normalcy as used here may be contested and strictly refers to the situation in which the normal day- to-day businesses proceeded notwithstanding the underlying tensions. For further clarification, see the wider debates in Section 2.2.5 of Chapter 2.

⁸³ The Panel comprised former UN Secretary-General, Kofi Annan (Chair), former President of Tanzania, Benjamin Mkapa and former South African First Lady, Graca Machel.

⁸⁴ See Agendas 1-3 of Appendix XI: Annotated Agenda for the KNDRP.

human security challenges caused by the violence,⁸⁵ while the latter sought to create a suitable atmosphere through which short-term human security challenges would be addressed and long term reforms undertaken. As such, Agenda 1 and 2 needed immediate government attention through a power-sharing arrangement (Agenda 3) and the long-term institutional reforms (Agenda 4).

Whilst this framing probably helped save lives and set the tone for long-term security sector reform agenda as contained in Agenda 4, some scholars, for example Brown (2009), contend that it placed greater priority on peace rather than on justice or democracy and therefore compromised 'the political reform agenda and carries significant future risks for Kenya and other countries' (Brown, 2009, p.1). Others for example Annan (2012) argue that it is this approach that saved the country and helped prevent the violence degenerating into the level of genocide like that witnessed in Rwanda. An analysis of the works of scholars holding views similar to Brown (2009), for example Le VAN (2011), Traill (2008) and Horowitz (2008) suggests that these are scholars critical of power-sharing as a quick means of resolving conflicts.⁸⁶ Interestingly, while criticising the framing of the KNDRP agenda items, such studies barely offer alternatives to how the Kenyan immediate post-election crisis would have been quickly solved without damage.

This study argues that power-sharing, far from being an Agenda 3 Item of the KNDRP and raising multiple questions amongst pessimists, was amongst the alternatives in addressing the wave of post electoral violence. Kingdon (2002) argues that apart from the problems that are on the agenda, 'a set of alternatives for governmental action is seriously considered' (Kingdon, 2002, p.4). The position here is that this set of alternatives receives serious attention at different times, and in instances becomes crucial in facilitating other agenda items. Thus power-sharing was crucial in facilitating security sector reform agenda in the long-term.

⁸⁵ The debates about human security are wide and beyond the scope of this thesis. For wider debates on human security in post-2007 Kenya see: (Jürgen Scheffran, Michael Brzoska, P. Michael Link, & Schilling, 2012; Kumssa, Jones, & Williams, 2009).

⁸⁶ This debate is elaborated further in Chapter 5.

While the agenda items had been agreed upon, the biggest challenge was the environment upon which these could be actualised. The hard-line stance taken by representatives of the two sides delayed the process. Odinga's side insisted on Kibaki stepping aside, while Kibaki side remained opposed to constitutional amendment that would lead to power-sharing (Tsuda, 2013). In the section "Half a Million Rwandan Ghosts: Crisis in Kenya" in the book "Interventions: A Life in War and Peace," Annan (2012) argues that 'the PNU side in particular was holding things back' and it was clear in his mind that 'Kibaki was to blame' (Annan, 2012, p.199) as 'the Odinga side withdrew its insistence that Kibaki should resign' (Tsuda, 2013 p.7). Miguna Miguna, Raila's former advisor, in his book 'Peeling back the mask: A quest for Justice in Kenya', seem to confirm Annan's argument. He writes, 'President Kibaki took and took from Mr Odinga without giving back anything during the negotiations' (Miguna, 2012).

Despite the hard-line stance, the KNDR committee agreed on statements and agreements that led to a number of concrete measures (Brown, 2011) that would later set the agenda for security sector reform in Kenya. KNDR led to the signing of the Agreement on the Principles of Partnership of the Coalition Government', which was later actualised through National Accord and Reconciliation Act 2008. It also led to other direct outcomes for example, the review of 2007 Elections, in which the Independent Review Committee (IREC), popularly referred to as the Kriegler Commission⁸⁷ was established as a short term agenda to investigate the conduct of the 2007 general elections and the acts of omission or commission of the security forces in the elections. The commission was mandated to issue recommendations without delay with a view to reaching mutual agreement on a comprehensive reform of the electoral system (Tsuda, 2013).

⁸⁷ Johan Kriegler, a retired South African Judge was named as the Chair of the Commission. The report of the commission is discussed in the next section of this chapter.

Also agreed upon was the setting up of the Commission of Inquiry into the Post-Election Violence (CIPEV) to investigate the facts and circumstances surrounding the violence, the conduct of the security agencies and make other recommendations.⁸⁸ Other direct outcomes of KNDRP include the Truth Justice and Reconciliation Commission and Constitutional reform while the indirect results included the Hybrid Tribunal (which was not established) and the International Criminal Court process⁸⁹.

3.6 Window of Opportunity: National Accord and Reconciliation Act (2008) as a Basis for Long-Term Security Sector Reform Agenda

The National Accord and Reconciliation Act (2008) was a product of 'forty-one-day peace process' (Lindenmayer and Kaye, 2009) under the Kenya National Dialogue and Reconciliation Process. Core to this peace process was the signing of the 'Agreement on the Principles of Partnership of the Coalition Government', popularly known as The National Accord, and its subsequent entrenchment in the Constitution through the National Accord and Reconciliation Act (2008). While there had been some limited reform endeavours in the past, 'the National Accord set the agenda for SSR in Kenya, guaranteeing that it would be discussed in various forums and monitoring reports that have proliferated since 2008' (Noyes, 2013, p.39). This view is maintained widely across the key informants.⁹⁰

Describing the Kenyan situation, Annan notes that 'a crisis presents us both with danger and opportunity' (Lindenmayer and Kaye, 2009, p.1). The Kenyan case presented danger because the level of ethnic⁹¹ animosity prevailing then threatened the core existence of the nation. The

⁸⁸ IREC and CIPEV were critical in the setting of the police and justice reform agenda and are independently discussed in the subsequent sections of this chapter.

⁸⁹ Some of these outcomes and processes are very wide and beyond the scope of this thesis, which is restricted only to the extent the outcomes influence police reform and to a lesser extent justice reform. For further analysis of these outcomes and process, see; Brown (2011), Brown & Sriram (2012), Kanyinga (2009), Anderson & Lochery (2008), Harneit-Sievers & Peters (2008).

⁹⁰ Interviews with K-Int1, K-Int2 and CSO2.

⁹¹ Ethnic and tribal animosities are used interchangeably in this thesis. While literature mostly refers to the former, the usage of the latter is more prevalent amongst the Kenyan public. See; Shilaho(2013).

opportunity, on the other hand, was that the crisis could be used to address deeply rooted problems (Lindenmayer and Kaye, 2009, Tsuda, 2013) that had been building up over several years yet neglected by previous governments. Some of these grievances include repeated ethnic migrations, and the cycles of dispossession, disparities in wealth and the endemic sense of marginalization amongst others.⁹²

An analysis of Agenda 4 items suggests that they are a list of challenges normal to transitional and developing countries. In the case of Kenya, they reflect a host of economic, political and social injustices that had been swept under the rug for a long time (Githongo, 2010). A comparative analysis of Moi's 'lost decades' (Abdullahi, 2011) and Kibaki's 'everything is possible without Moi' (Shilaho, 2013) suggests that the latter provided a window of opportunity to address 'poverty, the inequitable distribution of resources and perceptions of historical injustices and exclusion on the part of segments of the Kenyan society' (see; Appendix xi: Annotated Agenda for the KNDRP) that were prevalent during the Moi's reign. However it was somewhat a lost opportunity. Moi's exit was not a panacea to Kenya's socio-economic and political ills as NARC made the people believe during the campaigns. 'Patronage, corruption, tribalism, impunity and arbitrary rule remained hallmarks of Kenya's politics' (Shilaho, 2013, p.1) and so contributing to the 2007 post-election violence.

Thus, the 2007 postelection violence brought to the fore deep seated post-independence challenges that needed to be on top of government agenda. This reinforces the argument that 'a crisis or prominent event' (Kingdon, 2002) signals a problem that may require government attention, and Baumgartner and Jones (1991) view that policy may emerge from changes from dramatic events or more subtle influence. Suffice it to say, Kenya's case suggests that the government may have ignored subtle influences to prioritise police and justice reform in Kenya until a 'dramatic event' of post-election violence bubbled up onto the scene.

⁹² For detailed analysis of these grievances see; Oucho(2002); Oyugi (2002).

Agenda 4 items did not just present a few reform tasks, but multiple priorities.⁹³ The newly formed coalition government had ‘too many competing priorities: constitutional changes, reform of the disbanded electoral commission, a review of constituency boundaries, and ambitious judicial, civil-service, land, and parliamentary reforms, to name but a few’ (Githongo, 2010, p.8).

While long-term police and justice reforms were embedded in institutional reform under Agenda 4, the urgency to pursue the reform agenda was given prominence in the reports of the committees investigating the conduct of the elections and that investigating the post-election violence, popularly known as Kriegler and Waki commissions respectively. Kriegler report for example found out that the outcome of the election was fundamentally flawed that it was difficult to determine who actually won the election. Waki established that the police was culpable in the ensuing violence.⁹⁴

In order to effectively address these shortcomings within these institutions, there was need to anchor them into the new constitution. For example, ‘Agenda four stipulated that an independent police commission was to be established in the constitutional review process, while also requiring security laws to be updated to reflect democratic norms’ (Noyes, 2013, p.34). This was with the view to cushioning the police from political interference through piecemeal constitutional amendments as had been done by Moi and Kenyatta regimes.⁹⁵

With the Agreement on the Principles of Partnership of the Coalition Government (The National Accord) anchored in the Constitution through the National Accord and Reconciliation Act No. 4 of 2008, one would have expected that the two sides of the coalition government would pull together towards the same direction in the implementation of the reform agenda agreed. In fact, the National Accord reiterated that the two parties

⁹³ See Agenda 4 of Appendix XI: Annotated Agenda for the KNDRP

⁹⁴ The analysis of these reports touching on police and justice system is dealt with in subsequent sections of this chapter.

⁹⁵ This debate is developed further in subsequent sections.

could not govern without the other and so made a commitment to work together.

The president, political appointees and elected representatives (in this case MP's) invariably reign dominant in the setting of the reform agenda. This position is largely supported by Kingdon (2002) finding that senators and representatives 'are among the few actors in the political system who have marked impacts on both the agenda and alternatives that are seriously considered' (Kingdon, 2002, p.35).

To what extent does this apply to the setting of the security sector reform agenda in Kenya? While the actions of political leadership in Kenya suggest their active role, either facilitating or constraining, in setting the reform agenda and largely supports Kingdon's argument, there are perceptions that 'the ultimate solution to the Kenyan crisis was not affected by national leaders but forced on them by external actors' (Githongo, 2010, p.6). In supporting this, Brown (2009, p.6) writes 'the US sought to pressure Kibaki and Odinga to arrive at compromise, widely understood to involve some form of power sharing'.

Perhaps, another contribution in support of this argument is found in a study by Noyes (2013). Based on his interviews with stakeholders, he observes 'that demands from the international sphere have been effective in pushing reform because the international community wields the kind of sword that the government fears...Political as well as economic pressure' (Noyes, 2013, p.39). These views were also dominant amongst some of our interviews.⁹⁶

Various factors helped determine the SSR content of the National Accord, including the disposition of the negotiators, the political elite and external pressure. However, security leaders were not major players (Noyes, 2013). Since the ways agendas are set determine their implementation process, how might the deliberate exclusion of the police affect the implementation process? This is a question discussed in Chapter 4. In the

⁹⁶ Interviews with CSO3 and CSO6.

following section, discussions revolve around the outcomes, both direct and indirect, of the National Accord and Reconciliation Act 2008.

3.6.1 Report of the Commission of Inquiry into Post-Election Violence (CIPEV)

3.6.1.1 An Overview of Waki Commission

Apart from the National Accord and Reconciliation Act (2008), the KNDRP established the Commission of Inquiry into the Post-Election Violence (CIPEV), popularly referred to as the Waki Commission, after Justice Philip Waki, a Kenyan Appellate Judge who chaired its proceedings.⁹⁷ The commission was unique with respect to the history of commissions of inquiry in Kenya. Whilst there have been numerous commissions of inquiry before the Waki Commission, 'no commission of inquiry in Kenya has ever led to anything beyond a report' (Brown and Sriram, 2012, p.250). Some of these include; judicial commission of inquiry into the Goldenberg scandal (Bosire Commission), land grabbing (Ndung'u Commission), Kenya Anti-Corruption Commission report on Anglo-Leasing Scandal, political assassinations (Robert Ouko, Odhiambo Mbai), electoral violence (the Kiliku and Akiwumi commissions), and Kiruki Commission (the Artur Brothers scandal).⁹⁸

Against the background of non-implementation of reports of inquiry of previous commissions, the Waki Commission was special in terms of how it was constituted and how it undertook its mandate. First, its constitution was through a political process involving both the PNU and ODM, with both parties sympathetic to its hybridity.⁹⁹ The involvement of the two sides to the postelection crisis and its hybrid nature legitimised its work.

⁹⁷ The mandate of the Commission of Inquiry into Post-Election Violence (CIPEV) was to 1) investigate the facts and circumstances surrounding the violence, 2) the conduct of state security agencies in their handling of it, and to 3) make recommendations concerning these and other matters. (Waki Commission, 2008, pp., p.vii).

⁹⁸ Of all these reports, only Ndung'u report was partially implemented with some title deeds being revoked. However failure to implement it fully is partially to blame for the post-election violence especially in Rift Valley province. For more details see; Anderson & Lochery(2008).

⁹⁹ Apart from Justice Philip Waki, a Kenyan, the Commission had two international legal experts; Pascal Kambale, a Congolese human rights lawyer, and Gavin McFadyen, a

Secondly, the Commission was very clear that members of the security forces did not qualify for any appointment into the commission (Waki Commission, 2008). This guaranteed non-partisanship in its work and cushioned the Commission against interference from security sector actors.

Thirdly, in executing its mandate, the commission cushioned itself against political interference by 'an ingenious self-enforcing mechanism' (Brown and Sriram, 2012, Kenya Institute of Governance et al., 2008). It is this mechanism that eventually led to the Kenyan cases of the most culpable for the post-election violence being referred to the ICC.

However, some scholars have claimed that Waki Commission did not establish accountability mechanisms since no key perpetrators have been put to account. Noyes (2013) for example argues that the Truth, Justice and Reconciliation Commission and the Waki Commission, which both sought to investigate state security involvement in the 2007/08 violence 'neither established concrete accountability mechanisms' (Noyes, 2013, p.36). This thesis challenges this position. With the hindsight of possible interference in bringing into account those most culpable¹⁰⁰ for the violence, the commission recommended a hybrid Special Tribunal for Kenya to be established by deadline January 30, 2009, with a foreign prosecutor and only one Kenyan judge out of three, so that it is insulated from political interference, failure to which the ICC would take over Kenya's case. The project to establish a local tribunal was abandoned due to failure to pass a bill in parliament on three separate occasions (Brown and Sriram, 2012). It is this failure that brought the ICC question in the picture and saw Major General Hussein Ali, the Commissioner of Police, indicted though charges against him were not confirmed.¹⁰¹ In the same vein, the Kenyan political elite is unwilling to implement the TJRC report for fear of bringing into account the political elite.

senior police officer from New Zealand. It also recruited other foreign experts to help with the investigation.

¹⁰⁰ Waki Commission(2008, p.17).

¹⁰¹ Kenya failed to set up the tribunal forcing Kofi Annan to submit the envelope containing the names of the most culpable and evidence to the ICC. The outcome of this move is beyond the scope of this thesis.

The Waki report was presented in five parts.¹⁰² For the purpose of this thesis; the analysis of the Report is restricted to how it influenced the setting of the agenda for police and justice reform after the post-election violence. While all the parts are relevant to this thesis, a lot more attention is given to Part IV and Part V which dealt with acts and omissions of state security agencies and impunity; and recommendations made with a view to the prevention of future recurrence of large scale violence respectively.

3.6.1.2 Acts and Omissions of State Security Agencies and Impunity

The post-election violence, according to the Waki Commission was perpetrated by three sets of actors including ODM supporters, PNU supporters and the police (Waki Commission, 2008). A detailed account giving police involvement is presented in part four of the report. In investigating the acts and omissions of the state security actors,¹⁰³ Waki Commission (2008), finds the police as the most culpable security sector actor for the post-election violence, in terms of preparations, responses and aftermath of the violence. While other security sector actors had their share of blame, the accusations against the police stood out, creating an impression of an inefficient and ineffective security sector that cannot guarantee security to the citizens.

Notable is the fact that while there exists the Kenya Security and Intelligence Machinery (KSIM) through which security issues are prioritised at the top and through which delivery agencies interact on the ground, the absence of the National Security Policy to guide development of strategies to prevent or prepare for events such as postelection violence remained a matter of concern (Waki Commission, 2008). As such the commission prioritised the rollout of the National Security Policy

¹⁰² Part I discusses the historical context of the violence; Part II is a narration of the violence province by province. Part III deals with four cross cutting issues: sexual violence, internally displaced persons, the media and the nature and impact of the violence. Part IV deals with acts and omissions of state security agencies and impunity; and Part V contains recommendations made with a view to the prevention of future reoccurrence of large scale violence; the investigation of alleged perpetrators; and how to tackle the culture of impunity that has become the hallmark of violence and other crimes in the country Waki Commission (2008).

¹⁰³ Chapter 11 of Waki Commission (2008)

to enable the relevant sectors to develop their sectoral policies (Waki Commission, 2008, p.431). This proposal was important for the police as it would help define the areas of priorities in the envisaged reform process.

3.6.2 Constitutional and Legislative Framework for Reform

3.6.2.1 Constitutional Reform Process: A Brief History

One of the greatest achievements of the Kenya National Dialogue Process was the promulgation of a new constitution in August 2010. It was a culmination of many decades of unending debates only realised after the 2007 postelection violence. The need to review the Kenyan constitution 'had been high on the public agenda for at least two decades' (Brown, 2011, p.6). While Moi frustrated the process, the shift of power from Moi to Kibaki complicated the process. This shift in power was accompanied by a shift in attitude by Kibaki who started opposing the 2002 draft he had fervently supported while in opposition.

While Kenya's independence constitution was considered good for democracy, human rights, devolution of powers and checks and balances (Cottrell and Ghai, 2007), many years of methodical amendments by Kenyatta and Moi regimes dismantled provisions for freedoms and democracy and replaced them with a highly centralised system with lots of power in one person and all the largesse that come with it. These machinations were not in synch with the people's aspirations and set in motion agitations for reforms. The agitations reached climax in the 1990's thus forcing Moi to offer some concessions to start the review process through the Inter-Parties Parliamentary Group (IPPG) process ahead of the 1997 general elections. Not much was however achieved during Moi's tenure as the structures supporting Moi's rule were not changed.

Whilst constitutional review was high on Kibaki's campaign agenda, there was a deliberate attempt by Kibaki and his political elites to consolidate power. As a result, the draft previously proposed was watered down with a draft which, in the eyes of the public, sought to entrench imperial presidency which Kenyans had fought so hard during president Moi's

reign. For Kenyans, this was an opportunity ‘to reduce the personal power that had been accumulated by former President Moi’ (Waki Commission, 2008, p.29). Because of this, Kibaki’s proposed draft was rejected in the 2005 referendum.

The move by Kibaki’s inner circle is characteristic of societies in post-authoritarian transition, where consolidation of power becomes top of the agenda for the ruling elite.¹⁰⁴ In this case, with the state resources at their disposal, Kibaki’s associates sought to preserve the prerogatives they enjoyed and engaged in what Kingdon refers to as ‘blocking the initiatives that they believe would reduce those benefits’ (Kingdon, 2002). The establishment of a parliamentary system, as informally agreed before the 2002 general elections (Waki Commission, 2008) would erode the benefits that would accrue to Kibaki’s inner circle through a presidential system and therefore Kibaki’s loyalists frustrated the constitutional reform agenda that sought to establish the position of a prime minister with whom Kibaki would share power and devolved units in which presidential power would be redistributed. The biggest break in Kenya’s quest for a new constitution was realised in 2010. This had a number of ramifications especially in relation to the security sector as discussed below.

3.6.2.2. Constitutional Framework for Police and Justice Reform

It is argued that the security sector cannot function effectively if the administrative and legal framework is fundamentally weak (Hendrickson and Karkoszka, 2002). Thus, it was necessary to anchor the reform agenda in the constitution so that it is not hijacked or derailed by the ruling elite. An analysis of Kenya’s political transitions evidently shows the extent to which Kenyan leadership manipulated the security agencies for political expediency.

Beginning with Jomo Kenyatta, the presidency had by the year 1966 assumed all the control of coercive forces through the Public Security Act

¹⁰⁴ See Section 2.2.4 of Chapter 2 and Bratton (1994)

of 1966¹⁰⁵ and had at its disposal all the various sub-departments of the police (Gimode, 2007). Moi followed in Kenyatta's footsteps. Throughout the 1980s to 1990s the security forces, particularly the police, were used to suppress any criticism of his regime (Adar and Munyae, 2001, p.2), while Kibaki's tenure was characterised by ethnic imbalances especially in favour of his tribe (Hornsby, 2012). Such was the dalliance with the security sector and so the 2010 constitution sought to protect the security and particularly the police and the judiciary against such manipulations.

The principles governing national security are espoused in Chapter 14 of Kenya's constitution. A critical look at these principles suggests democratisation of the security sector. They also for civilian oversight mechanism, which is a core normative principle of security sector reform. Article 238(2a) states that national security is subject to the authority of this Constitution and Parliament, while Article 239(5) makes national security organs subordinate to civilian authority (GoK, 2010). In fact, the two articles offer 'the anchorage on where you want to interrogate the Kenyan security and more specifically because the two articles give you the broad vision, the principles and values of our national security and what you find there is that they form security as a bedrock of building a democratic state.'¹⁰⁶

The 2010 Constitution apart from establishing the framework for which the security sector reform is understood also gives powers to parliament to legislate the various institutions responsible for police and justice reform. These include provisions for establishment of the National Police Service, command of the National Police Service, National Police Service Commission, and the Independent Policing Oversight Authority.¹⁰⁷ The engagement of these institutions with the reform process is discussed in Chapter 4.

¹⁰⁵ This was in essence a version of the Emergency Powers Order-in-Council(1939) which was used to deal with Mau-Mau uprising but then used by Kenyatta to address *shifita* menace. For more details see Gimode (2007) and Hornsby (2012)

¹⁰⁶ Interview with CSO2

¹⁰⁷ See Articles 243,244, 245,246 respectively of the Constitution of Kenya; McCormick, Mitullah, & Manga, (2007)

From the interviews conducted, a majority of respondents are of the opinion that the constitutional provisions are clear in how the reform agenda was constructed. This position was particularly reinforced by key informants who are also senior officials of the National Police Service Commission and the Independent Policing Oversight Authority.¹⁰⁸ This was a remarkable departure from the past in which the executive initiated amendments that gave it undue influence over the security sector. In fact, it is on the basis of the Constitution that civil society groups whose focus is people's perspectives draw their agenda. An interviewee from a civil society group involved in community policing noted 'we are looking at how we can empower these communities to understand their rights as stipulated in the constitution so that it's hard for the politicians to manipulate them'.¹⁰⁹ However, as will be seen in Chapter four, there are those who point to constitutional lacuna, especially the political class, and seek to have the 'weaknesses' addressed through amendments of the police acts.¹¹⁰

3.6.3 Review of the 2007 Electoral Process

As already discussed, Kenya's electoral history had been wrought with violence ostensibly perpetrated by state security agencies and supported by state mandarins. However, the magnitude of the problems associated with the 2007 elections caused the need to review the country's electoral process. The post-election violence mainly associated with Kenyan politics 'offered society an invaluable chance to renew itself' (Kenya Institute of Governance et al., 2008, p.11), and its conduct of elections. It is in this light that the Independent Review Committee (IREC) was formed. Like the Waki Commission, there was consensus on the nominations of the ten member team to the committee who were subsequently appointed by president Kibaki and gazetted through Kenya Gazette Notice of 14/03/08 and sworn in on 20/03/08 (Kriegler, 2008). Specifically, the mandate of the Commission was to investigate the

¹⁰⁸ Interview with K-Int1 and K-Int2

¹⁰⁹ Interview with CSO1.

¹¹⁰ This debate is further developed in Chapter 4.

conduct of the 2007 general elections with respect to structural and contextual issues around which the process was conducted.¹¹¹

IREC report is critical to this study for a number of reasons. First, it found the police, alongside other institutions involved in the electoral process, equally culpable for bungling the elections. The report observes thus;

The Attorney-General certainly didn't lie awake (sic) at night worrying about all those crimes being committed with not a finger being lifted to stop them. If the police were concerned about this state of affairs, they were certainly very patient. The ECK, with its powers under the National Assembly and Presidential Elections Act, the Code of Conduct thereto and the Electoral Offences Act which include powers to prosecute never really bit anybody. Public opinion cheered the impunity on so long as it seemed to benefit the side they supported (Kriegler, 2008, p.24).

In particular, though the commission could not verify media reports it considered alarming, the fact that these reports mentioned adversely the involvement of the police raises questions about professionalism in the police sector. Reports like 'some 2,500 APs were being trained to interfere with tomorrow's (sic) General Election' and 'some police officers were allegedly marking ballots at the AP Commandant's house in Embakasi and at the fourth floor of Harambee House' (Kriegler, 2008, p.66) though not verifiable within the context of this research, raised questions about police involvement in the electoral process.

Secondly, it is on the basis of the report that a number of civil society groups and institutions assessed the impact of police reforms with respect to their preparedness for the 2013 general elections.¹¹² How did the Kriegler report contribute to the setting of the police reform agenda? The Kriegler report, like the Waki report, points to massive evidence of police

¹¹¹ For elaboration of structural and contextual issues, see; Kriegler (2008)

¹¹² See for example Akech and Mbote (2011)

involvement,¹¹³ either as agents of one side to the electoral contest, that is, PNU and so pointing to political interference in the operations of the police, or simply not acting as per the electoral code of conduct hence being perceived as biased in favour of PNU.

The underlying argument here is that the committee made far reaching recommendations focussing on the wider of societal change, while at the same time narrowing on the police as an institution responsible for law and order. This, it was hoped, would bring an end to the cycle of violence synonymous with Kenyan electoral process.¹¹⁴ The report notes;

No! The solution does not merely lie in constitutional and legislative changes. The culture of impunity in Kenya needs a fix too. The relevant law-enforcement institutions also need to do their jobs properly (Kriegler, 2008, p.24).

Reflecting on this not only reinforces the call to reform the police service but also brings to the focus the issue of citizen participation in the reform process.¹¹⁵

3.6.4 Report of the Task-Force On Police Reform (The Ransley Report)

Philip Ransley committee did a marvellous job....it informs the need to reform the National Police Service, to move it from a police force to police service, a service responsive to those that are served.....(sic).¹¹⁶

The above statement perhaps suggests that one of the most important processes in the setting of Kenya's post 2007 police reform agenda is the report of the Task Force of Police Reform, popularly known as the

¹¹³ 'Several administration policemen were killed in Nyanza province for being suspected PNU agents, an allegation the PNU and the government denied, saying that the officers had been deployed to oversee security in the handling of electoral documents', (Kriegler, 2008, pp., p.66)

¹¹⁴ See Section 3.4

¹¹⁵ See Chapter Six for further discussions on citizen participation.

¹¹⁶ Interview with K-Int1

Ransley Report. While the Ransley committee was not a direct outcome of the Kenya National Dialogue and Reconciliation process, it nevertheless was constituted as part as agenda four¹¹⁷ and therefore directly draws from agenda four in terms of laying the foundation for institutional reforms within the police service.

The report by far remains the most oft referred process in the discourse of police reform process in Kenya. Literature on police reform in Kenya considers the report as a point of departure from previous attempts at reforming the police. Works for example Furuzawa (2011) amongst others cite the report as the basis of reforming the police sector in Kenya. This position is also reflected in the interviews conducted across Kenya including interviews with NPSC, IPOA, Ombudsman and KNCHR.

In the wake of pressure to kick-start the agenda for reforms, particularly police reform, President Kibaki appointed the Ransley Taskforce on May 8, 2009 with the mandate to examine, among other issues, existing policies and institutional structures of the police, and to recommend comprehensive reforms that would enhance effectiveness, professionalism and accountability in the police services (GoK, 2009, p.ii). The taskforce submitted its interim report on August 26, 2009 detailing issues that required immediate attention in the short term and the final report on November 3, 2009 making recommendations for short, medium and long-term reform priorities.

Like the Waki report, the report was a first in its own right in setting agenda for police reforms. For the first time in the history of the republic the team went throughout the country and collected views from the police themselves and members of the public and other agencies regarding what was really required in terms of driving the reform agenda within the police sector.¹¹⁸ It also did benchmark studies in order to borrow from the best policing practices around the world. The Task Force visited police services in Botswana, United Kingdom and Sweden (GoK, 2009, p.vi).

¹¹⁷ Interview with K-Int2

¹¹⁸ Interview with K-Int2

These activities culminated into a 200 plus (sic) recommendations that were made which also resulted in what we call Police Reforms Implementation Committee (PRIC).¹¹⁹ PRIC together with Internal Security Ministry and other stakeholders then drafted legislation that brought in all the various organs that are now involved in the police sector, that is; the National Police Service, the National Police Service Commission, and the Independent Oversight Authority.

It is the Ransley recommendations that form the basis of analysis of the police reform process in Kenya. Chapter four analyses the priorities and discourses around the reform initiatives in general as proposed by the Ransley team. This is further developed in Chapter Six, with a specific focus on areas for which reforms are to lead to results for Kenyans as per the categorisation Ransley team, that is (i) police image accountability and partnerships(ii) professionalism, terms and conditions of service (iii)operational preparedness, tooling and logistical capacity, and (iv) Institutional, policy and legal reforms.¹²⁰ While these reform areas were overly ambitious and repetitive, the recommendations are reviewed by the researcher for analytical and conceptual clarity.

3.7 Conclusion

This chapter has focussed on agenda setting processes in relation to the post 2007 reform agenda in Kenya. The discussions have revolved around how issues are prioritised by governments, with the view to deepening our understanding on why comprehensive police reform agenda was not a priority to the Kenyan government until after the 2007 post-election violence. In order to achieve this, a number of agenda setting theories have been explored. In explaining the Kenyan context however, Kingdon's Multiple Streams Theory provided a more robust theory in explaining the processes in Kenya.

¹¹⁹ Interview with K-Int2

¹²⁰ See GoK (2009, pp., p.218-219)

Kingdon's framework has provided the platform on which understanding the agenda setting of Kenya police reform process is understood. What is important is that the implementation process of the reform agenda is largely influenced by how the agendas are set. The chapter concludes by exploring key processes that set the tempo for reforms in Kenya. The analyses in subsequent chapters draw from these processes.

CHAPTER FOUR

THE POLICE REFORM PROCESS IN KENYA 2008-2014

4.1 Introduction

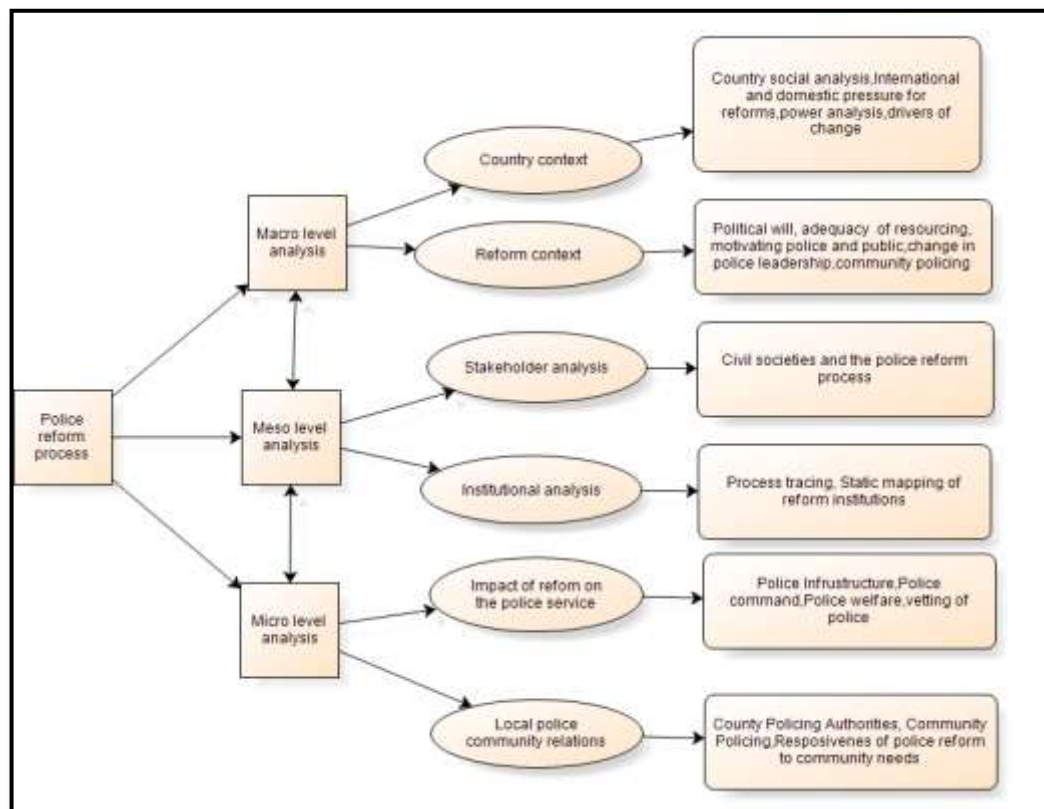
This chapter focuses on the implementation of the post 2007/8 police reform agenda in Kenya as analysed in chapter three. Specifically, the objective of police reform was to review the existing policies, institutional structures of the police, and undertake comprehensive reforms that would enhance effectiveness, professionalism and accountability in the police service. To achieve this objective, the Ransley Report (GoK, 2009) considered various proposals and processes and came up with four main reform areas, namely; (1) police image, accountability and partnerships; (2) professionalism, terms and conditions of service; (3) operational preparedness, tooling and logistical capacity; and (4) Institutional, policy and legal reforms that were eventually taken up as the core of the police reform process in Kenya.

Against the backdrop of the reform mandate stated above, this chapter discusses the contribution of the Kenyan local actors¹²¹ to the process, and explores the challenges associated with the process and how stakeholders responded to these challenges. These mainly relate to the first three secondary questions outlined in chapter one, thus, what were the security sector reform priorities in Kenya before and after the 2007-2008 post-election violence? What is the contribution of local actors to police reform and wider SSR processes in Kenya? How have stakeholders responded to challenges and deficiencies of SSR in Kenya? The aim here is therefore to critically examine and analyse the implementation of the police reform process that emerged after the 2007 post-election violence. The analysis draws largely from personal interviews and secondary data sources.

¹²¹ The study distinguishes between state and non-state actors with emphasis on civil society groups in the case of the latter.

To achieve this aim, the chapter adopts multi-level (macro-meso-micro) approach (Holland, 2007) as shown on Figure 2 below. The approach not only helps clarify multiple activities and the impacts of decisions of various stakeholders in the reform process, but also provides an effective framework for detailed analysis of the police reform process from the year 2008. In short, it facilitates process-tracing analysis of the police reform within the Kenyan context, while at the same time emphasizing on the interrelatedness of the three levels. Previous studies, for example, Police Reform in Bosnia and Herzegovina (Wisler, 2007) and recently, Globalisation, Police Reform and Development (Ellison and Pino, 2012) have adopted this approach in analysing police reform process.

Figure 2: Post 2008 Police Implementation Process



Source: Adapted from (Holland, 2007, Ellison and Pino, 2012)

This chapter is divided into five sections. Section 4.1 introduces the chapter and states the mandate from which the chapter examines the Kenyan police reform process. Section 4.2 looks at the macro-analysis level, focussing on the reform at the state level with emphasis on

decisions, activities and drivers of the reform process and how these filtered into the lower levels. It also considers the unique context, political-institutional culture, in which the police reform process takes place. Section 4.3 provides meso-level analysis focusing on stakeholder analysis and providing an in-depth institutional analysis of the process. Section 4.4 presents the micro-analysis, focusing on the impact of reform within the police service, analyses the reaction of the police towards the reform process handed down to the police from the macro and meso levels. It also considers police community relations and sets the stage for the analysis of chapter six of the thesis. Section 4.5 draws the main conclusions of the chapter.

4.2 Macro Analysis: Understanding the Country and Police Reform Context

Macro analysis of the police reform process in Kenya is understood from both the social and the reform context of the country, with the latter being understood as prerequisites for the success of police reform by the Task Force on Police Reform (GoK, 2009). The quick response to the Kenyan crisis by the international community (Brown, 2009) suggested the will of the international community to help Kenya through the difficult moment. On the other hand, the domestic enthusiasm that greeted the signing of the National Accord demonstrated the desire to which the Kenyan population looked forward to the reform process.

With both domestic and external pressures in 2007/08, the country was faced with a situation in which there were competing priorities for reform. Constitutional, legal and institutional reform became priority, with police reform receiving overwhelming support from the international partners, Kenya's political leadership and the population. The external/donor interests in police reform thus meant that the police reform process was initiated and controlled externally from the police system. Compared to previous police reform process, the strategy for implementation was also different. Failures of previous reform efforts provided lessons for developing post 2007/08 police reform strategy. To understand this

strategy, this section looks at the macro issues critical for the successful implementation of the police reform process in Kenya. At this stage, decisions are reflected in the overall level of consensus or debate within the political elite. This is done with the hindsight of the police reform initiative before the 2007 postelection violence to bring the police reform context to the fore.

4.2.1 Political Will

Existing literature on pre-2007 police reforms in Kenya for example (Manby, 2008, BICC, 2005) point out to the fact that these reform initiatives did not yield much because of lack of high level political will to drive the reform process. This position seems to be confirmed by the interviews with many respondents. For example, a senior official of a peacebuilding group in Kisumu noted that 'lack of political goodwill if addressed then all other things will happen.'¹²² It is therefore no doubt that the Ransley committee singled out political will as being one of the major macro elements critical for the police reform process (GoK, 2009).

While literature extensively acknowledges the nexus between politics and police reform, the impact of political will as a macro element on the police reform process in Kenya remains under-researched. Though a comprehensive discussion of the same is beyond the scope of this chapter, political will simply means a demonstrated credible intent of political actors (elected or appointed leaders, stakeholder groups) to undertake the reforms with the view to addressing structural problems in the police force. For Jackson and Albrecht (2010) political will is the willingness to take on external ideas about best practices. The actors at macro level are those who are able to significantly influence the design, implementation and outcome of policy reform (Holland, 2007). Without political will, the government's statement of police reform, strengthening of transparency and accountability and enhancement of police-community relations remain mere rhetoric. The influence of politics discussed at the macro level in this section is more on the political drivers of the police

¹²² Interview with CSO6.

reform process, rather than the more specific political power play under consociational arrangement which is discussed in Chapter five. How then did political will, as a macro element influence the police reform implementation process in Kenya?

The police reform process in this study is situated within a political context, where political contestations defined the police reform process. Thus, the fact that the political competitors, that is, the Party of National Unity and the Orange Democratic Party, agreed to dialogue under the auspices of the international community and begun the process of reforming the police was an expression of the willingness to undertake reforms. Whilst previous attempts to reform the police had proven difficult due to lack of political will from the political elite and the fact that it was case of 'police intent on reforming themselves',¹²³ the post 2007 reform process was born out of a political process. Though difficulties at arriving at consensus were witnessed at the formative stages of the reform process, the fact that the president and the prime minister agreed on the way forward was instrumental in whipping up the political elite and the bureaucrats, leaving them with little or no options to effect the policy decisions supported by the principals to the coalition.

At the macro level therefore, a number of decisions by the political elite significantly impacted on the reform process. Key amongst these was the readiness to dialogue with different stakeholders with the view to addressing structural problems in the police, establishment of the taskforce on police reform, formation of the reforms implementation committee and the support and endorsement of the constitution of Kenya 2010 which institutionalised the reform process. The establishment and gazetting of the National Task Force on Police Reform¹²⁴ on May 08, 2009 in line with the Agenda Four of the KNDRP, the Waki Commission, Kriegler Committee and other police related reports on reform processes perhaps remain the greatest expressions of the political will to undertake reforms. One year into the coalition government and after intense

¹²³ Interview with K-Int1.

¹²⁴ See Section 3.6.4.

pressure from stakeholders, the Ransley taskforce provided the framework for undertaking the reform process as discussed in Chapter 3. The findings and the recommendations of the report remain largely the framework upon which police reform process is anchored in Kenya.

Apart from the Ransley committee, the establishment of the Police Reform Implementation Committee (PRIC) does demonstrate government's resolve to reform the police. The committee was tasked with the responsibility to identify quick wins and prioritise recommendations made by the Ransley committee. Specifically, the committee was charged with the mandate to implement, oversee and monitor reform of the National Police Service for one year before the institutionalisation of the reform process in the constitution and subsequent pieces of legislation guiding the established institution. The committee, together with Internal Security Ministry then drafted legislation that brought in all the various organs that are now involved in the police sector, that is; the National Police Service, the National Police Service Commission, and the Independent Oversight Authority.¹²⁵

The promulgation of the 2010 constitution was a collective national endorsement of the political will by a majority of Kenyans. While the constitutional review process had been a dividing factor amongst the political elite for over a decade, the promulgation of the 2010 constitution provided a common ground for the political elite to entrench the police reform process in the constitution. The constitution actualised the institutionalisation of the police reform process through the Police Service Commission; Independent Police Oversight Authority; Policing Policy; and National Security Policy' (GoK, 2009).

The analysis of the reform processes under the political realm of macro decisions suggests two things. First, that the influence of political will interplayed at two phases, the first phase, referred to in this thesis as the pre-implementation phase, mainly dealing with the contextual issues and the reform environment. This is the formative phase in which political will

¹²⁵ Interview with K-Int2

was visible. The Kenya government expressed willingness to ease off immense international pressure for reforms, ostensibly to demonstrate the need to professionalise the police. This is the immediate post 2007 period in which the police reform process was characterised by wide ranging political-will across the Kenyan population. Most of the decisions to establish the police reform mechanism were by consensus and cascaded down from the political elite involved in the 2007 electoral context. While it is fair to claim existence of political-will, this was mainly to the extent of improving the capacity of the police, rather than enhancing its accountability.

In the second phase however, referred to as the actual implementation phase, the political-will was tested when it came into the actual control of the process through the established institutions. In cases where political-will was noticeable, police reform process was seen in the form of professionalising the police with the aim of making it effective and developing its capability to enforce law and maintain public order, but at the same time paying lip service to accountability. Parties to the coalition government engaged in push and pull, with both sides either vetoing the nominees to the institutions of reforms or delaying the process all together. The politics of control of the process also extended to the institutions leading to altercations amongst the leadership of the institutions.¹²⁶ It is this kind of will that the Jubilee government continued to pursue by providing vehicles to the police and installing integrated security surveillance in urban areas beginning with Nairobi and Mombasa while at the same time watering down civilian oversight mechanisms by amending the laws relating to oversight.¹²⁷

Secondly, there appears to be a systematic attempt to maintain the institutional memory of the reform process. Police reform process was part of the long-term institutional reform process under Agenda Four of the KNDRP. As such, the process was also bound to take a longer period implementing. In such cases therefore, it is important to maintain 'a strong

¹²⁶ This argument is further developed in Section 4.3

¹²⁷ See Section 5.3.1.3

core group of leaders of the process' (Jackson, 2010, p.2) to guarantee institutional memory of the process. The Kenya police reform implementation process therefore addresses this pitfall which has been inevitably lacking in many reform contexts. For example, looking at the composition of membership of the Taskforce on Police Reform and the Police Reform Implementation Committee, there is similarity in terms of membership within the wider security sector in Kenya. At individual level, a number of people have been incorporated into the membership of subsequent processes. For example, our interviewee K-Int2 was a member of the both the Ransley Committee and the Police Reforms Implementation Committee and is still associated with the reform process.¹²⁸

While the actions of the political elite at the macro level in the forgoing discussion suggests the presence of political will at the formative stages of the implementation of the reform process, interviews with stakeholders generated mixed reactions. Some respondents argued that the reform process is on course due largely to political will. Notable was the fact that amongst those claiming the existence of political will are key informants from the National Police Service Commission and the National Police Service directly involved in the process,¹²⁹ while those disappointed by the slow pace of reform and claim lack of political-will are mainly from the opposition and civil society groups. In this category was a leading opposition politician in Kisumu who also doubles as a human rights activist and a prominent Nairobi based human rights activist also involved in advocating for human rights perspective of police reforms.¹³⁰ On the other hand, others are apprehensive of the government's commitment to reforms. One interviewee noted; 'political goodwill is still haunting a lot of these reforms and you can see it in parliament, read it in the newspaper, see it in public (sic).'¹³¹ The category of respondents claiming lack of political will does not only see lack of commitment to reform emanate from

¹²⁸ Interview with K-Int2

¹²⁹ Interviews with K-Int1 and K-Int3

¹³⁰ Interviews with CSO3 and CSO2

¹³¹ Interview with CSO3

the political establishment, but also from the wider sections of the society with political links. A respondent put it thus, 'there are people who are in the system who do not want efficient police because they are thriving in this inefficiency.'¹³² These are the people who frustrated earlier reform initiative and continue even today to want to use the police for their own gain; business people, political people and even the government itself, not the government as an institution but individuals who want to do that.¹³³ Whatever the position regarding the political will, there is strong evidence to sustain the argument that political will (or lack of it) is still a major issue in Kenya's police reform process.

4.2.2 Adequacy of Resourcing

Closely linked to and reinforcing the political-will is resourcing of the reform process. The post 2007/08 police reform had enormous budgetary implications for the Kenya. Financing the reform called for commitment beyond what the government had been allocating to the police. During the financial year 2010-2011 for example, the Police Reform Implementation Committee required a total of Ksh. 19,751,500,000 for the reform programme, out which the Government committed Ksh.10,681,500,000 (PRIC, 2010). The remaining Ksh.9,170,000,000 would be mobilised through donor funding. For the year 2013-2014, the police was awarded Ksh.60 billion out of the Ksh 80 billion that the police requested from the treasury- a shortfall of Ksh.20 billion to be bridged by donors.¹³⁴ In terms of budgetary allocation, 'this is the first since independence where you can see that there is a serious attempt to provide huge resources to the service.'¹³⁵

Funding the police reform process was a test measure to the political will discussed previously, not only for the Kenyan government, but also for the international community that brokered the peace deal that called for reforms. Donor support for police reform process is largely undertaken

¹³² Interview with K-Int2

¹³³ Interview with K-Int1

¹³⁴ Interview with K-Int3

¹³⁵ Interview with K-Int2

within the framework of democracy and governance assistance with attention being given to Agenda Four items under which police reform falls (Zeeuw, 2010). Three categories of donors remain active in supporting police reform.¹³⁶ The first group comprises multilateral agencies including the UNDP and the Delegation of the European Commission. The second category involves bilateral partners, mainly comprising four donors and includes mainly Sweden, Britain, USA and Netherlands.¹³⁷ Bilateral support is through basket funding managed by the UNDP and the UNODC and focus on different priorities as seen on Table 3 below.¹³⁸

Table 3: Donor priority areas of reform¹³⁹

Donor	Priority areas	Amount in USD	Agency
Sweden	<ul style="list-style-type: none"> • Capacity building • Ethics and accountability mechanism • Community policing • transformation of the Judiciary • integration of a human-rights-based approach in the prisons service, • Civic education of citizen rights under the new constitution. 	9.9 Million USD	UNODC-managed Joint Donor Basket Fund
United States	<ul style="list-style-type: none"> • Internal Affairs Unit • Model police stations • Accountability, • professionalism, • Transparency in service delivery 	2million USD	Chemronics-USAID
Netherlands	<ul style="list-style-type: none"> • Public oversight • Accountability initiatives • Anti-corruption crusade 	10.9 million USD ¹⁴⁰	Usalama Reform Forum Saferworld
United Kingdom	<ul style="list-style-type: none"> • Improved security and accountability • Training of senior commanders • Drafting of content for the new Police laws and advocating reform implementation 	30.6 Million USD ¹⁴¹	DfID, UNODC

Sources: Kingdom of the Netherlands (2014), Open Aid Data (2014), Zeeuw (2010)

Sweden supports community policing, gender and child protection. It is also leading in terms of resources and development support. The United States support Internal Affairs Unit which deals with complaints while the

¹³⁶ The researcher was only able to interview a key informant from DfID`. Other donors did not grant the opportunity for unknown reasons.

¹³⁷ Interview with K-Int3

¹³⁸ Basket Funding is a joint funding modality by several donors for a sector or for budget support

¹³⁹ Though the donor assistance covers wide programmes, our focus here is on those programmes that have police reform component. The agencies stated are those that are directly involved with the police.

¹⁴⁰ See; (Kingdom of the Netherlands, 2014)

¹⁴¹ Open Aid Data (2014)

United Kingdom supports public order management and training of police commanders particularly during the 2013 general elections.¹⁴² The training provided by the UK however became the subject of debate after it emerged that the training provided was used to eliminate Muslim clerics believed to be preaching radicalism.¹⁴³ On its part, Netherlands supports police reform process through non-governmental organisations groups, notably through Saferworld and Usalama Reform Forum. The police only monitor these funds as noted by a key informant ‘they tell us how much they have given the civil society and then we are monitoring how they are spending’ (sic).¹⁴⁴ Recent bilateral support was signed between the government of Kenya and Turkey in which the latter would support programmes to modernise and upgrade the Kenya police service to tackle the threat of terrorism (Adan, 2014)

Whilst it was not possible to obtain the exact extent of funding for the different agencies involved in the reform process, interviews with the key stakeholders indicated that adequate funding remains a challenge though given government’s commitment, the allocations to these institutions remain acceptable. For example, a key informant from IPOA argued that it would be practically impossible to get everything they wanted at one once and so what is important is to optimise on the resources they get from the government.¹⁴⁵ Additionally, when the Jubilee government took over, the president authorised an additional Ksh.4 billion annually to go towards supporting police operations.

Despite the increased funding for police reform process as compared to previous reform attempts, the issue of inadequate resources continues to be an inhibiting factor. This finding was not only limited to respondents from within the police service, but also from the wider stakeholders involved in the process. According to a key informant in the police service, the pace of reforms remains slow, ‘the major reason is finances. Everything is on paper. Some of the recommendations by the task force

¹⁴² Interview with K-Int7. Also see; DfID (2015).

¹⁴³ See; Jepson (2014).

¹⁴⁴ Interview with K-Int3.

¹⁴⁵ Interview with K-Int2

headed by Philip Ransley have never been addressed.¹⁴⁶ Another respondent supporting police-public partnership and who unsuccessfully applied for the position of the first Inspector General of Police noted that 'one of the handicaps that is facing the police force is equipment and facilities particularly, transport.'¹⁴⁷ At the same time, it was noted that inadequate funding was responsible for the fact that community policing started by civil society organisations was not rolled out throughout the country and that it also made it hard to push forward the community policing agenda.

While in the eyes of the public the police reform 'does not respond to the needs of the people because they are underfunded,'¹⁴⁸ some key informants felt otherwise, noting that while inadequate resources is an issue, it is not one the greatest challenge facing reforms as the police would want Kenyans to believe. They argue there is evidence of 'massive investment of money by certain countries specifically American and British governments in Kenya's security system' and that 'the problem is not about not about capacity or resources but a system and people who have a certain institutional culture and practice which got so engrained and it is so privileged that they cannot believe it can go.'¹⁴⁹ Comparatively, there was evidence of increased funding for the police though this was still not sufficient to fund the police reform process.

4.2.3 Motivating Police and Public

Public confidence in state institutions in the immediate post 2007 was at all-time low. Various reports and surveys indicated that Kenyans did not have confidence in such institutions. In their second review of the progress on implementation of the Kenya National Dialogue and Reconciliation Process, South Consulting assessment of the reform process captured the frustration of the public in the institutional structures in Kenya thus, 'From the Executive and the Judiciary to the Legislature,

¹⁴⁶ Interview with K-Int3

¹⁴⁷ Interview with K-Int6

¹⁴⁸ Interview with CSO6

¹⁴⁹ Interview with CSO2

citizens' confidence in institutions is at an all-time low. Institutions are not seen as being competent dispensers of their mandate, but avenues for personal aggrandisement, active participants in creating moral decay and practising ills such as favouritism and ineptitude'.¹⁵⁰ Undertaking reforms under this kind of attitude from the public was thus a challenge. Alongside demonstrating political will, there was a deliberate need to inspire confidence from both the police and the public - the police, because they are a critical cog in the reform process, and the public, as the beneficiary of a reformed police service.

Compared with other countries, confidence in Kenya's police remained low at 3.5 out of best 7 in 2009, compared to Botswana, UK and Sweden which scored 4.9, 5.4 and 6.2 during the same period respectively (GoK, 2009). Yet in another public opinion conducted between 4 and 9 July 2009 by Synovate Research in 2009 amongst some 2,005 respondents, only 8% had confidence in the police.

Where the police and the public do not have confidence in the police reform process and amongst each other (the police and the public), there are bound to be tensions between the two groups. These tensions have ended up in members of the public attacking the police in the course of their (the police) duty. Interviews conducted revealed that these tensions relate to historical legacies of policing in Kenya.¹⁵¹ Any time you talk about engagement between the police and members of the public usually a lot of fear especially by members of the public of the police because of the atrocities that the police have committed.¹⁵² Additionally, the members of the public do not trust the police for fear that the police collude with the criminals and this could jeopardise their safety in the event they cooperate. This feeling is captured succinctly by the following interview;

‘the police and the citizen- you and me- have no good relationship. Because if I see a thug there, I don't care because if I tell a police, a thug will go and buy his way out the police will tell him or her and

¹⁵⁰ South Consulting (2009)

¹⁵¹ Interview with CSO2

¹⁵² Interview with CSO1

the police will tell him this is the guy who told me and they will come and will kill me(sic).¹⁵³

While historical legacies of policing were cited as being responsible for this relationship, some police officers interviewed believe that the Kenyan public respects and fears the police. A police officer attached to Kilimani Police Division noted that public fear of police is such that where members of the public beat up a police officer, then in most cases it is about 'misconduct of the police themselves,' mostly police officers soliciting for bribes from unwilling members of the public.¹⁵⁴ There was therefore an urgent need to change this situation as a prerequisite for the success of the reform process.

To achieve this objective, the immediate priority was to transform the police from 'force' to 'service' and put the police officer and members of the public at the centre of the reform process. The two police forces, the Kenya police force and the administration police were then merged into a service with the hope that this would both motivate the police and the public. The police welfare would be a core element of the planned reform process while service delivery and accountability to the public would be the driving force for reform. Compared to the country's intelligence service, the transformation of the former Directorate of Security Intelligence (DSI) to the National Security Intelligence Service (NSIS) in 1999 had a profound impact on the officers compared to their counterparts in the police force.

Again, as a long-term measure, the establishment of the National Police Service Commission as 'a collegiate institution that would now be involved in the process of carrying out the human resource function that would give stability to the police service'¹⁵⁵ was meant to reassure the police that their interest was key in the reform process. More still, the establishment of the Independent Policing Oversight Authority was to give members of the public the confidence of the commitment to managing complaints

¹⁵³ Interview with CSO6

¹⁵⁴ Interview with NPS6

¹⁵⁵ Interview with K-Int1

against the police. It was believed that this would improve police–public relations.

4.2.4 Change in Police Leadership

Police Commissioner Major General Hussein Ali Mohammed was relieved of his duties and appointed chair of the postal corporation on September 08, 2009, barely two weeks after the Taskforce on Police Reform submitted its interim report on August 26, 2009. On the same day the 'president extended the mandate of the Task Force up to 30th September 2009' (GoK, 2009, p.4). Mathew Iteere, a long serving GSU commandant was subsequently appointed the Commissioner of Police.

While the analysis of police leadership straddles meso-micro levels in this thesis, the removal of the police chief was a significant macro decision. One of the Ransley committee recommendations was change in police leadership (GoK, 2009). Ali's removal was therefore an immediate response to the Ransley Committee recommendation. Ali was appointed in the year 2005, due to what is largely believed to be 'political implications of crime and lack of faith in the police leadership' (Hills, 2007, p.410) by president Kibaki. Significant in Ali's appointment was the fact that his predecessor, Edwin Nyaseda was close to Raila Odinga, Kibaki's political opponent and was therefore viewed with lots of suspicion within Kibaki's inner circle (Hornsby, 2012). Why was Major General Hussein Ali dismissed? What was the consequence of this dismissal to the police reform process?

Change in police leadership at the recommendation of the Ransley committee is significant for two reasons. First, the macro environment had significantly changed. While the president still had unlimited authority to appoint and remove the commissioners when Ali was appointed (Hills, 2000), Iteere's appointment required consultations between the president and the prime minister. However, the president still had his way in the appointment as the Ransley committee did not make explicit the procedure for appointment. The committee only emphasized that 'that

persons with proven leadership and managerial skills, high moral integrity, an ability to spearhead reform, be appointed' (GoK, 2009), it did not provide for the procedure to be followed in the appointment prior to the institutionalisation of the position of the Inspector General. Thus, the process was not competitive and was still largely influenced by presidential attitude. This observation is in tandem with Alice Hills observation that the police are largely governed according to presidential preference (Hills, 2007). Public interest in the appointment of Iteere was pushed to the periphery with the appointment being the responsibility of the state and denied the public the opportunity to interrogate Iteere's philosophy on police reforms.

The second significance of change of guard in police leadership is due to the fact that the change was meant to instil public confidence that the government was keen on police reform. Critics of Ali's leadership style argue that he had presided over a police force that had lost credibility in the eyes of the public. It was during Ali's tenure that the police was at loggerheads with human rights activists over special police squads that hunted down and killed members of the Mungiki sect ¹⁵⁶ (Oluoch, 2013) and committed human rights abuses in the fight against Sabaot Defence Lands Force (SLDF) in Mt.Elgon (Alston, 2010). Thus Ali's removal was not only expected to demonstrate the political will to reform, but also to inject new police leadership that would steer the police reform process in the interim period. A further analysis of police leadership at the command level is discussed in Section 4.4.1.

4.2.5 Nyumba Kumi Initiative: A Top-Down Community Policing Approach

In a Government Gazette Notice November 8, 2013, Interior Cabinet Secretary Joseph Ole Lenku established and made appointments to the National Taskforce on Community Policing, popularly known as 'Nyumba Kumi initiative'. This was a macro decision with impact on the reform

¹⁵⁶ A youth movement formed in the late 1980s as a religious movement based on Kikuyu traditions. It later transformed itself into a political movement while simultaneously developing a notorious reputation for violence.

process at both meso and micro level. Meso, because the taskforce became yet another advisory on reforms alongside the Police Reforms Unit which also reported to the cabinet secretary, and micro because community policing is a micro issue that involves police and citizens interactions at the local levels.

How does the nyumba kumi initiative filter into the police reform process? What are the institutional interests or otherwise conflicts that arise out of this taskforce? These questions are answered within the larger framework of police reforms in Kenya. Nyumba Kumi initiative was conceived in the wake of the Westgate attack, after it emerged that the terrorists had rented an apartment near the Mall, from where they planned their attack. The initiative is a neighbourhood security (community policing) concept borrowed from Tanzania which encourages people clustered around ten households (nyumba kumi) to be vigilant and weed out criminals in their midst by cooperating with law enforcement agencies.¹⁵⁷

While the Kenya Constitution (GoK, 2010) in Article 244 provides for promotion of public partnership with the broader society in handling security issues and in essence legitimising police-community partnerships, upon which nyumba kumi rests, it bestows the responsibility to foster such relationship with the Inspector General, and not the cabinet secretary for Internal Affairs. In this light therefore, the government assumed the responsibility of the Inspector General under Article 10 which states that the Inspector General shall 'issue guidelines on community policing and ensure co-operation between the Service and the communities it serves in combating crime' (KCLR, 2011a, p.13).

While the taskforce mandate was to advise on community policing, (GoK, 2013), the first major role of the taskforce was its participation in the police vetting process. Its chairperson and the vice chairperson were part of the vetting committee. The research did not establish the framework supporting their involvement in the vetting process which is the responsibility of the National Police Service Commission Vetting

¹⁵⁷ See Chapter six for further discussions.

Committee which is presumably independent. Thus, their participation in the process and integrity questions surrounding its chairman raised issues regarding the real purpose for which it was formed.

At another level, the Simiyu Werunga, the vice chairperson of the taskforce who was previously a fierce critic of how the reform process was being undertaken was nominated by Usalama Reforms Forum to chair the forum's Governing Council. Usalama Reforms Forum is on record opposing the formation of the taskforce. The forum had argued that the taskforce would spend two hundred million Kenya shillings and come up with an obvious report. This was in relation to the fact that some committee members (alluding to the vice chairperson) had been researching on crime and would come with the same findings (Ombati, 2013). It would therefore be interesting to understand how these two extreme positions; that of sitting in a committee implementing a state sponsored community policing project while at the same time serving in the governing council of an organisation opposed to the government initiative.

Since NPSC is an independent commission directly answerable to the president, the inclusion of the taskforce answerable to the cabinet secretary in the operations of NPSC was seen as tantamount to the NPSC commission being answerable to the cabinet secretary.¹⁵⁸ According to a member of the police vetting committee, these institutional overlaps are not clear and may have been exploited to involve the taskforce on community policing in the vetting process.¹⁵⁹ This point is particularly important as the period preceding the vetting process had seen the Executive propose that the NPSC is made answerable to the cabinet secretary- a proposal that NPSC challenged in its submissions to the parliamentary committee with regards to amendment bills to the NPSC and NPS Acts.

¹⁵⁸ Interview with CSO2

¹⁵⁹ Interview with K-Int8

Whilst the government is keen on pushing nyumba kumi initiative, thus denoting a 'top down' power decision making process, the concept was not received well, particularly by the opposition, with sections of Kenyan society criticising the move as illegal and a duplication of efforts. In other areas, for example in Uasin Gishu, Nyumba Kumi stakeholders in the County raised concerns over lack of commitment from the government to the programme.¹⁶⁰ The police too seem ill prepared and show little understanding of the concept.¹⁶¹ Perhaps the clearest indications came during the vetting process of top police officers in which police officers demonstrated ineptitude in explaining what the concept entails.

Has nyumba kumi helped address insecurity? We argue that the initiative is one of those many distractions from the urgent challenges facing spiralling crime in the country. Rather than establish a taskforce not anchored on law, this study argues that channels already exist for which community policing could be converted into tangible results. More so, community policing presupposes community mobilisation efforts which could best be pursued through county policing authorities recognised by the constitution. The fact that the executive dismissed those opposed to the initiative led to strong opposition to the initiative in opposition stronghold. Perhaps, a reconciliatory tone could have been struck with the government seeking to understand why opposition and leading civil society groups were opposed to the initiative. This could have heightened the much needed legitimate accountability of the police to the communities they work with. Otherwise, the initiative remains one of those initiatives devoid of substantive content and lacking in operational utility.

4.3 Meso Analysis: The Police Reform Implementation Process

The previous section explored the macro factors driving the police reform process. As demonstrated in the section, Ransley committee mandate was wide enough to include far reaching reforms in Kenya police. Of significance is the fact that it stated that 'special focus to be given to

¹⁶⁰ See; Wesonga (2014)

¹⁶¹ Interview with NPS2

recommendations on: Police Service Commission; Independent Police Oversight Authority; Policing Policy; and National Security Policy' (GoK, 2009, p.3), as institutions that would drive the reform process. As such, the establishment of these institutions was significant in moving the police reform process forward.

This section does two things. It presents the role of various stakeholders in the police reform implementation process and discusses the role of police reform institutions established by the macro level decisions. What is the role of local stakeholders in the police reform process? How did the process to establish police reform institutions progress and to what extent have the institutions been crucial in the police reform process? To address these questions, this section is divided into two sub-sections. The first section provides a stakeholder analysis at the meso level, focussing on the role of civil society as local stakeholders in the reform process, while the second section provides an institutional analysis of the police reform process. Analysis of this type is essentially a narrative form of analysis (Holland, 2007).

4.3.1 Stakeholder Analysis

In order to understand the influence of various stakeholders in the implementation of police reform, it was necessary to answer the question, who are the stakeholders in Kenya's police reform process? Our exploratory interviews revealed that a number of stakeholders, at personal and institutional levels, are involved in the reform process and that their interests and influence affect decision making and implementation at varying degrees and at different levels of the reform process. However, it was not possible to establish the roll of the stakeholders based on the fact that there is no data at the National Police Service of stakeholders in the police reform process.

For analytical purposes only, this study draws a distinction between state and non-state actors. The former is construed to mean government and state agencies directly involved in the reform process, while the latter

includes donors, the private sector and civil society groups with interests in the reform process as shown on the Table 4 below. In terms of policing, Baker (2011), considers the non-state to apply to local collectives providing everyday policing and may include; customary leaders, religious organizations, ethnic associations, youth groups, work-based associations, community police forums, conflict resolution non-governmental organizations (NGOs), the lowest and informal levels of local government and entrepreneurs. For him therefore, reform of the state police system should also target non-state actors as they are directly involved in provision of security.

The state actors are involved in the process at both macro and meso levels of analysis considered here. The president, parliament and respective ministries are involved at the macro level in terms of policy decisions and providing policy directions, while the other actors, namely; the National Police Service, the National Police Service Commission, and the Independent Policing Oversight Authority (IPOA) operate at the institutional level and form the bulk of the analysis of the process discussed in Section 4.3.2.

Table 4: Key stakeholders in Kenya police reform by category

Government and State Agencies	Non-state actors
The President	The Private sector
Parliament	Donors
Ministries (Interior, Finance, Devolution)	Civil society groups
Judiciary	Business community
The Police	The Kenyan Public
IPOA	
NPSC	
The National Police Service	

While it was obvious to pinpoint the entry point of various stakeholders in the reform process, the same was not visible in terms of deliberate attempt by either the National Police Service or the National Police Service Commission to include external stakeholders in the reform process. For example, non-state actors' participation in the reform process seems to be motivated by the inadequacies in the state-led process and all the wrong things that have characterised policing in

Kenya. This is perhaps illustrated by the entry of the PRWG and IMLU in particular through the weaknesses detected in the vetting mechanism and the 2011 survey which reported that the police was responsible for 63% of state perpetrated torture respectively.¹⁶² According to an official of the PRWG, 'If 63% of state violence perpetrators are the police, it means that if the police, as an institution, is reformed we can reduce state perpetrated torture by 63%.¹⁶³

For the purpose of this research, our analysis of non-state actors in the reform process is two-fold. First in Section 4.3.1.1, we focus on the role of Kenya's civil society organisations in the police reform process during the period 2008-2014. Secondly, we broaden the debate in Chapter Six to include other forms of non-state actors to include; the youth, the women, community leaders, private security companies and business community amongst others.

4.3.1.1. Civil Society Groups and the Police Reform Process

The point of departure in the understanding of the role of civil society in Kenya's police reform process is an acknowledgement that civil society as a concept is a theoretical rather than an empirical one (Bratton, 1994). However, for the purpose of making the concept serviceable, Bratton (1994) defines civil society as 'a sphere of social interaction between the household and the state which is manifest in norms of community cooperation, structures of voluntary association, and networks of public communication.' Three characterisations in Bratton's (1994) definition namely; norms of civic community, structures of associational life and network of communication interact in different proportions depending on context. These interactions make civil society unique in different contexts. In the case of Kenya, our consideration of civil society borrows from Cottrell and Ghai (2007 p.5) to include non-governmental organisations(NGOs), associations of professions, trade unions, social movements – such as of women, the disabled, minorities, and youth –

¹⁶² Interview with CSO7

¹⁶³ Interview with CSO7

and think tanks). This presents diverse spheres of interests. For our purpose in this section, we limit ourselves to NGOs that are directly involved in the police reform process during the period of covered by this thesis.

An assessment of civil society participation in the police reform process indicates that civil societies played a crucial role in the agitation for police and wider societal reforms in Kenya's transitions in the 90's and post-Moi era; including the post-2007 reform. In fact, 'if it had not been for the involvement of civil society in Kenya you would not have had Agenda Four' (sic) (Noyes, 2013, p.36). An assessment of the post-2007 civil society participation in the police reform process suggests that there is a huge and untapped potential for civil society participation in the police reform process. While there is evidence of involvement of these groups, this engagement still falls far below the capacity of the civil society groups.

The momentum for the civil society participation in the process picked up in the year 2011 with the establishment of Police Vetting Working Group. This was a loose coalition of civil society groups that sought to 'establish a framework for the vetting of all police officers as provided for in the National Police Service Act'.¹⁶⁴ Whilst the Act provided for the vetting of all police officers, there were no tools, no mechanism, nor the framework for undertaking this process. The National Police Service Commission which was charged with the responsibility of vetting had not even been formed at the time. As such, the Police Reforms Working Group was founded for the purpose of developing guiding tools and guidelines of the process so that once the vetting starts then it would guarantee that human rights issues are taken on board (sic).¹⁶⁵

The Police Reform Vetting Working Group comprised ten civil society groups, under the convention of the Independent Medico Legal Unit (IMLU). Initially, the group was conceived of as a 'one-off thing' to develop

¹⁶⁴ Interview with CSO7

¹⁶⁵ Interview with CSO7

the vetting tools and guidelines and present the same to the vetting authority, in this case the National Police Service Commission (NPSC) after which the group would dissolve. However, since vetting processes were taking long to establish, some group members felt that they needed to broaden their mandate. It is at this point that the group transformed into the Police Reforms Working Group so that it encompasses all aspects of police reforms.¹⁶⁶

Meanwhile, a section of the Police Vetting Working Group mutated into Usalama Reforms Forum and established itself as a premier platform for citizens' participation in the reform process. This process thus led to two distinct groups involved in the police reform process at the national level. Other civil society groups that operate at national level include International Centre for Policy and Conflict (ICPC) which sought High Court interpretation of the bills that aimed to amend the National Police Service Act and the National Police Service Commission Act and the Kenya Council of Employment Migration Agency (KCEM) which sought to stop all-together the vetting process on the argument of integrity of the panellists. The groups were motivated by a common objective of fast-tracking police reform process, though driven by different civil society interests.

The PRWG and Usalama have at certain times worked together though pursuing distinct agendas, while bringing on board various organisations as shown on Table 5 below. That the Kenya National Commission on Human Rights (KNCHR) works with the two groups also emphasizes the point of convergence for the two groups. However, the interviews did not establish at what levels KNCHR involves in with these groups owing to its distinct mandate which it undertakes as state entity. Again, controversies surrounding the appointment of the commissioners to the KNCHR made it difficult for the commission to play its oversight role of the security organs as focus was on these appointments which had exceedingly delayed at the time of data collection. Civil society participation in the police reform

¹⁶⁶ Interview with CSO7

process at the national level has thus been revolving around the two groups alongside a host of other individual organisations.

Table 5: Key civil society groups in Kenya police reform process

Police Reforms Working Group-Kenya	Usalama Reform Forum
1. Independent Medico-Legal Unit	1. Usalama Reforms Forum-Executive
2. Kenya Human Rights Commission	2. The Commission on Equality and Human Rights
3. International Commission of Jurists(ICJ) Kenya	3. PeaceNet Kenya
4. Federation of Women Lawyers	4. Saferworld
5. International Centre for Transitional Justice	5. World Vision
6. National Coalition of Human Rights Defenders	6. Eastern Africa Institute of Security Studies
7. Coalition on Violence Against Women	7. Eastern Peace Institute
8. Haki Itawale	8. Research Triangle Africa
9. Rights Promotion and Protection Centre	9. Kibera Community Policing Committee
10. The Commission on Equality and Human Rights	10. Socio-Economic Rights Foundation
11. Legal Resource Foundation	11. Amani Parliamentary Forum
12. Centre for Minority Rights (CEMIRIDE)	12. Nairobi Peace Forum
13. International Commission on Human Rights Defenders.	13. Chemi Chemi Ya Ukweli
	14. African Policing Civilian Oversight Forum
	15. Commonwealth Human Rights Initiative

Source: Interview with CSO7

Source: Usalama Reform Forum

The activities of the two lobby groups, that is, Usalama and the PRWG, cascade down to the community level with the subsidiary groups involved in lots of community safety programmes at grassroots levels. For example, Peace-net and Saferworld all working with Usalama have been involved in the training of community policing communities in Kibera slums in Nairobi and Isiolo to embrace the ‘best practices on community based policing so that they would know how to engage in the whole process’.¹⁶⁷

Though bound by common agenda of ensuring police reforms, the interviews revealed differences between the two groups. A PRWG official

¹⁶⁷ Interview with CSO1

noted; 'I don't know for what reasons Usalama has been receding from the working group and taking initiatives on police reforms as Usalama Group, not as the PRWG.'¹⁶⁸ Interactions with some officers attached to Usalama revealed that there is strong competition for donor funding involved the police reform process. This view is also supported by the approach the two groups take in handling controversies in the police reform. For example, in relation to vetting, Usalama took an advisory approach; PRWG was more critical and at times threatened to go to court to have their agenda included.

Usalama has been involved in a number of police reform initiatives, particularly focusing on the four areas of reform suggested by the Ransley committee. Amongst other things, Usalama has been training communities on police accountability, monitoring the recruitment process, auditing of police stations, assessment of the curriculum, developing service standing orders and helping review police reform processes.¹⁶⁹ These activities are organised under four thematic strands namely; police professionalization, decentralisation and community policing, oversight mechanisms and legislation and policy.¹⁷⁰

On its part, PRWG focuses on human rights perspective and the involvement of members of the public in the police reform process. In fact, it has been 'engaged in public county police reforms initiatives, basically to sensitise (our) people on police reforms and making sure that people are aware of what is going on so that they can also have their voice.'¹⁷¹ This initiative has led to positive response from the public in terms of engagement with the reform process. In fact, many county forums trained by PRWG 'in different counties actually sent a memorandum to the Constitutional Implementation Commission (CIC) and the Parliamentary Committee on Administration and National Security'¹⁷² with regards to June 2014 amendments to the Police Acts. Thus, it is clear that the

¹⁶⁸ Interview with CSO7

¹⁶⁹ Interview with CSO5

¹⁷⁰ Interview with CSO5

¹⁷¹ Interview with CSO7

¹⁷² Interview with CSO7

activities of PRWG, undertaken under four pillars namely; accountability, quality service, public participation and police welfare, (IMLU, 2013) are yielding results.

On the contrary, PRWG key informant reported indifference from the institutions involved in the reform process, particularly the NPSC and the NPS. Despite several attempts by the PRWG to get involved in the police reform process, their relationship with these institutions has not been cosy. This relationship is captured by extracts from an interview with the key informant; 'we met them (NPSC) and we offered them finances, they said they did not need our finances... Concerning the IGP, I wouldn't say we have had that cordial relationship with IGP, but doesn't mean that we have not engaged them. With IPOA, at least they have moved. We were involved in the development of the validation of their regulations which we think are very progressive.'¹⁷³ These statements risk portraying the fact that no attention is given to the PRWG by institutions involved in the police reform process. Evidently, after the PRWG had petitioned the NPSC to extend days for the public submission of complaints against police officers from seven to ten days, the NPSC responded positively and extended the period to fourteen days and guaranteed that late submissions would also be considered as long as vetting interviews of involved officers had not been undertaken. Thus, to make a blanket statement of non-cooperation from the police institutions is to be unfair to the institutions.

Despite the invaluable support the two groups make to the reform process, Interviews with our key informant from the Directorate of Reforms at the National Police Service attested to the fact that Usalama remains the most preferred civil society forum for engagement with the public in the police reform process by both the National Police Service and the National Police Service Commission. In fact, Usalama Reforms Forum and Saferworld are the vehicles through which the international community, particularly the Dutch Government, sets priorities for police

¹⁷³ Interview with CSO7

reform in Kenya as described by the respondent; 'What Netherlands does is that they set our priority then they channel the funds through the civil society. That is where the Usalama and Saferworld now get their money to come and conduct their activities (sic).'¹⁷⁴

But, why would Usalama be the preferred forum for engagement despite the two groups doing invaluable role in the police reform process? Whilst no formal interview was provided to establish this question from Usalama forum, informal interactions with some Usalama field officers revealed that there is strong competition for donor funds between the two groups. In fact, it emerged that donor funding is channelled to Usalama which then accounts its expenditure to the NPS as observed by a key informant; 'They (Netherlands) tell us how much they have given the civil society (Usalama) and then we are monitoring how they are spending (sic).'¹⁷⁵ This brings into question the utilisation and accounting for donor funds in the police reform process especially where the police service accountability mechanism is in doubt, and the civil society groups are left to account for the funds. 'Why would they be spending billions of money on a system that they know for a fact does not meet the basic requirements of a community?'¹⁷⁶

The above situation perhaps explains the difference in approach taken by the two groups in the police reform process. Whilst there have been a common ground on certain issues, KPRWG takes a more combative approach in dealing with sticky issues of reforms. For example, the group has on a number of occasions claimed that the vetting process pays less attention to human rights component which is critical in the vetting process. On the other hand, Usalama Reform Forum takes a non-combative approach, preferring to address reform challenges through forums and publications. This is with the view perhaps not to jeopardise the seemingly cosy relationship between Usalama Forum and the institutions engaged in the police reform process.

¹⁷⁴ Interview with K-Int3

¹⁷⁵ Interview with K-Int3

¹⁷⁶ Interview with CSO2

Alongside the civil society participation revolving around PRWG and Usalama Reforms Forum at the national level as well as grassroots level, there are a lot more other groups contributing to the reform process. For example, in Kisumu County, groups such as Kisumu Citizens Residents Voice (KICIREVO), Communities Initiative Action Group Kenya, Kisumu against Crime and Local Capacities for Peace International amongst others exist. More significantly, these organisations involve themselves in the reform process separately thus presenting a disjointed civil society participation in the process. This is partly due to poor structures that would define the entry point for the groups into the reform process and also the vested interests of the civil society groups themselves.

Disjointed reform effort notwithstanding, there is evidence that the capacities for engaging stakeholders in the police reform process are yet to be fully utilised. Most of these organisations have community coordinators whose community mobilisation contribution to the reform process still falls below capacity due to the absence of defined structures of engagement with the police.

4.3.2 Institutional Analysis

Institutional analysis of police reform process in this research is considered at two levels, namely; process tracing of the reform and static mapping of the reform institutions respectively. Process-tracing aims at providing a narrative account of the institutionalisation of the reform process.¹⁷⁷ Static mapping on the other hand seeks to assess the organisational context of the reform process with the focus being on the capacities and responsibilities of the reform institutions.¹⁷⁸

¹⁷⁷ Process tracing is a qualitative method for tracing, or following, the cause-effect flow of resources and decision making from a policy change through the implementation process as a means of testing assumptions about the expected impact of a particular policy reform. See; Holland (2007).

¹⁷⁸ Static mapping provides a snapshot of the organizational context for policy reform implementation by illustrating the resources and responsibilities of the agencies and organizations that are implementing policy change (Holland, 2007).

4.3.2.1 Process-Tracing the Institutionalisation of the Police Reform Process

As stated in the previous sections, the 2007 post-election violence provided an opportunity to provide an audit of the conduct of Kenya's security system in the elections, a move that had never happened in the history of the republic - that of putting security chiefs to account for their acts and omissions. In fact, it demonstrated that it was no longer tenable to trust the police on the one hand to undertake internally driven reforms, while at the same time trusting the political elite to champion police reform process - the police because attempts by the police to reform themselves bore no fruits, and the politicians because the ruling elite had previously only been interested in piecemeal reforms targeting police professionalism without accountability, while at the same time maintaining the status quo.

Thus, the police reform process that emerged after the 2007/08 post-election violence to a large extent supports the argument that sometimes a dramatic event, often negative, triggers the need to reform (Downs, 1972) and that long periods of policy stability could be changed dramatically through a short period of critical mobilisation (Baumgartner and Jones, 1991). These debates have already been discussed and developed in chapter three. However it is important here to mention that while Waki Commission spelt out the acts and commissions of the security sector in the 2007/8 post-poll violence, institutional problems including the police were largely responsible. This triggered a series of processes that sought to address the problems. Reforming the security was one such process with the police reform being the basis of the reform process. Though the debates in this chapter to a large extent assume historical analysis, special focus of process-tracing is significant in the institutionalisation of the police reform process. The periods, 2008-2010 and 2010-2014 provide the basis of this analysis.

4.3.2.1.1. Developing the Framework for Reform: 2008-2010

The first phase of the reform process relates to the agenda setting process of the police reform process and establishment of the reform framework from which the subsequent reform process would filter.¹⁷⁹ The Ransley committee marked the first major step to kick-start the process and widely the basis from which the reform process flowed. 'It informs the need to reform the National Police Service.'¹⁸⁰ Whilst the previous attempts were mainly state-centric processes with little or no public participation, the Ransley Committee adopted a more comprehensive approach. The committee traversed the country collecting views from the public and the police thus instilling a sense of ownership of the process.¹⁸¹ It gave the process a sense of local ownership amongst the police and members of the public, and there had the benefit of buy-in from amongst various stakeholders. Notable was the political will from the government that expressed the readiness to implement the recommendations of the report when it presented its interim report by relieving the police chief of his duties on the September 08, 2009 and establishing the Police Reform Implementation Committee (PRIC) to oversee the reform process on January 08, 2010.

As a direct outcome of the Ransley report, the Police Reform Implementation Committee (PRIC) was established through the Kenya Gazette Notice No. 169 of January 08, 2010. This was critical step in the coordination of the reform process. In the past, the Administration Police (AP) and the Kenya Police (KP) undertook reform initiative separately thus making it difficult to deliver a coherent reform strategy. It took about two months only for the government to agree to the establishment of the committee as recommended by the Ransley committee. During this time, there were indications of conflicts of power-sharing dynamics within the coalition government and policy decisions would take too long to implement. That notwithstanding, the fact that the coalition partners

¹⁷⁹ See Chapter 3

¹⁸⁰ Interview with K-Int1

¹⁸¹ Interview with K-Int2

agreed to establish the Police Reform Implementation Committee within a period of only two months was therefore remarkable by any standards and reflected the existence of consensus amongst the political players on the reform process. Later on in the process, however, there were delays in the implementation of priority areas relating to the institutionalisation of the reform process.¹⁸² The committee, 'together with Internal Security Ministry then drafted legislation that brought in all the various organs that are now involved in the police sector, that is; the National Police Service, the National Police Service Commission, and the Independent Oversight Authority.'¹⁸³

In drafting the bills, namely the National Police Service Bill, and the Independent Policing Oversight Authority Bill, the committee adopted a consultative approach. Like the Ransley committee, the Naikuni committee sought views of the public on the bills before presenting the same to the cabinet for approval. The committee also made submissions to the Constitutional Review Committee about the reform provisions in the constitution. This made the inclusion of the police reform process less controversial compared to other provisions including devolution.

Once approved by the cabinet, the committee held a consultative meeting with the house committees namely the National Security, Administration of Justice and Legal Affairs and Constitutional Implementation Oversight Committees on November 19, 2010 in Mombasa to seek a common ground before presenting the bills to the house. The bills were tabled before parliament on August 23, 2011. Since the process of developing these bills was participatory amongst different stakeholders and in particular amongst legislators, the passing of the bills was thus less controversial in the house.

¹⁸² See Chapter 5

¹⁸³ Interview with K-Int2

4.3.2.1.2. Institutionalising the Reform Process: 2010-2014

The second Phase of the reform process was the institutionalisation of the reform process which is traced to the promulgation of the 2010 constitution. While evidence suggests that there had been good intentions of reforming the police, the framework was not followed through due to lack of institutionalisation of the process. The Kenya constitution passed on August 4, 2010 was a first in many ways. It echoed the many years of struggles in changing Kenya's governance. In relation to the police; the constitution institutionalised the police reform process. Most of the recommendations put forward by the Ransley and Naikuni committees were included in the constitution thus effectively institutionalising the reform process.

For the first time in the history of the republic, the constitution insubordinated security to the will of the authority of the constitution and the people through their elected members of parliament and made security organs subordinate to civilian authorities.¹⁸⁴ The constitution also provided the platform for legislating on the laws that would thereafter control the reform process through various acts of parliament. It provided for the establishment of the office of the Inspector General, the National Police Service, the National Police Service Commission and the Independent Policing Oversight Authority. The role of these institutions in the reform process forms the crust of the police reform debate at the meso level.

While it may have been worthwhile to pass the laws concurrently to provide a holistic package for reforms, these were done at separate times. The National Police Service Act was published first followed by the National Police Service Commission Act and Independent Policing Service Authority, while the Private Security Bill and the Coroners Bill are still pending. This approach created confusion as to how the Inspector General of Police and the two deputies would be appointed. Some members of the civil society viewed this as a deliberate attempt to allow

¹⁸⁴ See section 3.6.2

for a political deal between the Kibaki and Raila by making such appointments through a selection panel rather than as provided for in Article 246(3) of the Kenyan constitution, which bestows such a function to the National Police Service Commission. Of particular interest is the delay in passing the pending bills which makes it difficult to determine the entry point of private security providers in the reform process. This has presented a challenge as pointed out by a key respondent; ‘Among the challenges we have are those pending bills. You know there is a meeting point for these. So even if you enact the National Police Service Act, the National Police Service Commission Act, there is the role of the private security providers. There is that disconnect.’¹⁸⁵

While the police laws provided for distinct role of the various actors in the reform process, interpretation of these laws by various actors led to confusions amongst the institutions, particularly involving the NPSC and the office of the Inspector General. The former was viewed in some quotas, particularly within government, to wield immense powers thereby weakening the latter’s control of the police service. These developments led to the introduction of amendment bills to the National Police Service and the National Police Service Commission Bills that strengthened the office of the Inspector General by transferring the most crucial functions of the NPSC including; transfer and disciplining officers to the Inspector-General.¹⁸⁶ This confusion prompted ICPC to seek judicial interpretation of the role of the Inspector General and the NPSC regarding appointment, transfers and promotions.¹⁸⁷

On March 28, 2014, the High Court ruling declared unconstitutional and illegal the Inspector General’s promotion of officers. The case set precedence and formed the basis of contestation between the office of the Inspector General and the NPSC. Later on the April 24, 2014, members of parliament passed the contentious bills that effectively provided powers to the Inspector General while weakening the NPSC and the IPOA. In effect,

¹⁸⁵ Interview with K-Int3

¹⁸⁶ See 4.3.2.1.2 for further discussion

¹⁸⁷ Interview with CSO2

external accountability that had been a critical issue in the development of police reform process was taken aback. The bills were signed into law in June 2014.

The two phases identified in the process tracing of the institutionalisation of the police reform process demonstrate stakeholder participation in varying proportions. The process of developing the framework for police reform was more participatory with the government conceding some ground to build consensus. However, despite opposition to amendments of the police laws from civil society groups and donors, the government remained recalcitrant and insisted on pushing for the amendments to the police reforms laws that were earlier developed through consultations. Whilst there was the need to address the controversies involving the IG office and that of the NPSC, failure of the government to consult broadly supported the claims that the government was not keen on genuine police reform. In fact, some respondents claimed that of all the institutions established to spearhead the police reform process, it was only the office of the Inspector General that still remained political.¹⁸⁸

4.3.2.2 Static-mapping the Reform Institutions

This section provides the organisational context for police reform implementation, also known as to ‘static-mapping’ (Holland, 2007) in the wider policy reform implementation process. The focus is on analysis of the institutions established at the macro level to spearhead police reforms, namely; National Security Policy, National Police Service, National Police Service Commission and the Independent Policing Oversight Authority.

4.3.2.2.1 National Security Policy

The Ransley Committee prioritized the finalization and roll-out of the National Security Policy which had already been drafted by the National Security Intelligence Service (GoK, 2009, p.205). The committee argued

¹⁸⁸ Interview with CSO2

that the policy would provide a platform from which sectorial policies, including the police reform process would emerge. Beyond this, there was the need to develop the National Policing Policy, to guide policing in Kenya. However, at the time of writing, there was no evidence that the National Security Policy had been rolled out though the development of the National Policy on Policing was on course by the National Police Service Commission.

Whilst the Kenyan constitution expressly articulates Kenya's national security vision, conspicuously missing in Kenya's police reform process is the National Security Policy from which the process would derive, and which would explain the security environment under which the police service operates. Because of this, myriad reform interventions by different stakeholders, for example the intervention by the civil society groups notably Usalama Reforms Forum and the Police Reforms Working Group are in conflict with each other thus contributing to confusion in the reform process.¹⁸⁹

This confusion can be explained from different points of view. First, there are no clear guidelines for determining the entry point of various stakeholders in the reform process. A respondent from the civil society groups observed that in the absence of clear policy guiding their role in the police reform process, they 'just engage in any policy that affect peace and conflict in the country.'¹⁹⁰ The same situation obtains amongst the donors. For example the DfID informant noted that though they support the reform process 'it's not been clear how DfID'¹⁹¹ should support the process for there are no clear guidelines from the government of Kenya on engagement with bilateral partners.

Secondly, the absence of national security strategy, at least in the public domain if it ever exists, also raises questions amongst the Kenyan public regarding the framework upon which to judge the performance of the police and the Kenyan security in general. As noted by a respondent,

¹⁸⁹ This debate is developed in subsequent sections of this section.

¹⁹⁰ Interview with CSO1

¹⁹¹ Interview with K-Int7

‘without such a document then it becomes difficult to interrogate the competence and role of oversight on the police and how the police coordinate with other agencies to ensure public safety’.¹⁹² Response to sporadic security problems has been disjointed with the police often found on the receiving end. One of these problems was the government’s response to the Westgate Shopping Mall terrorist attack on September 21, 2013.¹⁹³ Whilst the control of the situation should have been within the remit of the Inspector General who was expected to give briefings, ‘he was not able to give those briefings. In the end the public was left speculating and asking questions’¹⁹⁴ about who was in charge of the whole process. The confusion witnessed in the rescue efforts perhaps underscores the need for the completion of the National Security Policy from which the police and other security agencies would demarcate their roles.

Yet another significant development was the ‘Operation Usalama Watch’ mounted by Kenya’s security in April 2014. The operation sought to clear the country, particularly the Somali dominated district of Eastleigh in Nairobi, of illegal immigrants thought to be responsible for terrorist and grenade attacks in the country. This was a response to terrorism threat the country faced, six months after the Westgate incident. While the operation mimicked the emergence of Kenya’s counter terrorism strategy (Rawlence, 2014), it failed address the root causes of Kenya’s security problems but rather contributed to strained relationship between the police and the government on the one hand and human rights groups, the opposition, Muslim community and Somali constituencies in Kenya. It also further polarised Kenyans along religious lines with the Muslim community claiming the operation was in response to a criminal attack in church in Likoni, Mombasa. The Inspector General was also accused of re-

¹⁹² Interview with CSO2. It is important to note that this interview took place before the Westgate attack. The confusion at Westgate thus reinforced the need to have a policy that demarcates the role of the police in such attacks for the public to gain confidence in the police.

¹⁹³ The attack lasted on September 24, 2013 and claimed the lives of 72 people.

¹⁹⁴ Interview with K-Int6

introducing shoot to kill order while the Muslim community condemned what they termed systematic profiling of the Kenyan Somali community.

However, while there was opposition to the operation, no tangible alternative was being offered in dealing with the high population of illegal immigrants claimed to have infiltrated Eastleigh. Others recommended intelligence-led policing in dealing with suspected terrorists but remained silent on dealing with aliens. In the end, the government resolved to undertake new registration of all Kenyans.¹⁹⁵ This situation provides an important lesson for police reform process in Kenya. Where no comprehensive strategy for dealing with internal security challenges during the police reform process is in place, or unknown to the public, haphazard interventions roll back the gains made in the reform process, particularly with respect to consolidating the legitimacy of the police amongst the people.

4.3.2.2 From Force to Service: The National Police Service

The change of name from a force to a service was an immediate priority to signal the break with the past in the police force – a past in which ‘the police has continued to be viewed as the most inefficient, the most corrupt, the most ineffective among the public sectors.’¹⁹⁶ Thus it was hoped that change of name would alter the image of the police so that it would be responsive to those that are served, that is the public.

Merging the two forces was however not going to be easy. The two forces had different trajectories and cultures. The Administration Police has very strong connections with the provincial administration and many of the senior officers are not police professionals. Because of this, the Waki Commission proposed gradual merger. The Ransley team on the other hand reported that Kenyans were opposed to merger (GoK, 2009, p.42-43) and therefore proposed maintaining the two forces as independent but under the Inspector General. Article 239(1) of the Kenya Constitution

¹⁹⁵ The Star (2014)

¹⁹⁶ Interview with K-Int1

(GoK, 2010) effectively gave rise to the Kenya Police Service with its functions, organisation and administration legislated through the National Police Service Act, 2011. The two police forces, the Administration Police and the Kenya Police were maintained as independent entities directly under the control of the Inspector General. There emerged a two-track policing system which was not intended by the drafters of the police reform agenda. Though the Ransley team acknowledged the challenge of merging the two services, the magnitude of the problem was underestimated and remains un-addressed by the police reform process.

Based on the information gathered from the fieldwork, the process of merging the two forces under the command of the Inspector General received weak mandate. While it may appear that the merger works at the national level, this is not the case at the county and sub-county levels. A common theme emerging from personal interviews and focus group discussions at the county level is that the merger actually has not worked and that the police reform process is yet to deal with this challenge. The Kenya Police and the Administration Police still conduct business as they previously did. There has never been an attempt to make the units to think and act as one service. This arrangement is more problematic at the county level with mostly the Kenya Police complaining about their Administration Police counterparts.

‘the police are sometimes complaining that most of the AP’s, they are many but see, they are doing other works, but after those works,(sic) ‘wakitoka huko kwa banks joini’,¹⁹⁷ they want now to go on operations, operation that even the OCPD who is actually in charge of the police force within the area has no role and they are not answerable to. And you can find, AP arresting suspects they take them there (police cells), they say police release them

¹⁹⁷ Loosely translates that ‘*when they leave those banks in the evening*’. The banks in Kenya have traditionally used the Administration Police for providing guard services to their premises and cash in transit duties.

because of lack of coordination, lack of understanding, so really there is total disconnection between these units of the police.¹⁹⁸

This situation undermines the command of the police service at the county level and opened up opportunities for interference with the running of the police while at the same time frustrating efforts towards internal accountability.

Interviews with stakeholders also do suggest that transforming the two forces into a service is far from being achieved. The police are 'still doing things the same old ways which has failed.'¹⁹⁹ For example, during data collection in a divisional police headquarter in Nairobi; a traffic officer who thought the researcher had committed a traffic offence demanded the researcher's car keys without knowing first what had taken the researcher to the station. This narrative was reinforced in the focus group discussions with the youth in Kisumu. Similar to this is the fact that despite the researcher's wishes to have audience with the Inspector General; the IG's orderlies would not allow the researcher audience with the IG on claims that IG was busy. From the time research clearance was obtained from the National Council of Science and Technology, it took almost one month from July 29, 2013 to August 21, 2013 to get permission to interview police officers. This was after several visits to the IGs office. This story was also replicated in the face to face interviews with many respondents giving unpleasant experiences in the hands of the police even in the face of on going reforms.²⁰⁰

4.3.2.2.3 National Police Service Commission

The establishment of an institution dedicated to human resources issues in the police force is not entirely a new phenomenon in Kenya. The Independence Constitution of 1963 envisaged a commission 'responsible for determining the terms and conditions of service of the police' (GoK, 2009, p.45). This however did not last as the 1964 amendments abolished

¹⁹⁸ Interview with CSO3

¹⁹⁹ Interview with K-Int2

²⁰⁰ See Chapter 6

the Police Service Commission and placed the police under the Public Service Commission.²⁰¹ The Police Strategic Plan 2003 also proposed the establishment of a commission that would oversee human resource functions in the police (Kenya Police, 2004, p.23), while the Ransley team recommended 'immediate amendment of the Constitution to create the Police Service Commission' (GoK, 2009, p.50).

Following these recommendations, Article 246 (1) (GoK, 2010, p.150) of the Kenya Constitution 2010 and subsequent National Police Service Commission Act of 2011 established a commission in charge of administrative matters of the National Police Service. Whilst the establishment of the institution fairly involved some consensus, the controversies around the appointment of the commissioners and the complications surrounding its operations are of interest in this study. What was the underlying reason for contestation for the appointment of the commissioners and why are the operations of the commission dogged with controversies? The interviews revealed two main reasons, namely; interests of the political elite and resistance from the police and their associates that have over the years benefitted from the confusion in the police service respectively. However, the informants were not willing to divulge much, as their appointment to their offices was subject of contestation. Of interest is the fact that these key informants were not keen on taking this conversation further, instead claiming the controversies were a case of 'water under the bridge.'²⁰²

Firstly, the complications regarding appointments to the NPSC were due to the politics of power-sharing at the time²⁰³ and the 'determination by both sides to control on who becomes the Inspector General, who becomes the Deputy Inspector General, who becomes the Director of Directorate of Criminal Investigations.'²⁰⁴ The process of appointments initially looked very straight forward until 'when it came to forwarding the

²⁰¹ See Hornsby (2012)

²⁰² Interview with K-Int1

²⁰³ See Chapter 5 for further discussions.

²⁰⁴ Interview with K-Int2

name of the best candidate that had been agreed upon,²⁰⁵ to the president and the prime minister. Whilst the informant absolved the principals, the president and the prime minister from blame, he argued the vested interests, in this case the political elite and presidential appointees may have been responsible for the confusion by deliberately sending to parliament ‘another candidate who was not even amongst the top’²⁰⁶ for parliamentary approval.

Secondly, the commission encountered lots of resistance especially from the police due to ‘the realization that this commission is very strong institution in terms of democratizing policing.’²⁰⁷ It is for this reason that there has been disquiet within the top police hierarchy that they called upon the president to sack the NPSC chairman. However, this was impossible as the chair enjoys security of tenure as an independent institution in the constitution. The strongest indication of resistance came from the withdrawal of the security details of the chairman and subsequent dumping of a human head within the precincts of NPSC offices with a letter addressed to him. Later, just before the second phase of the vetting process, yet another poison laced letter was addressed to the NPSC together with another commissioner. Though these were treated as normal crime incidents, that the event happened as the commission was preparing for police vetting raised lots of queries. Again, there have also been public altercations between the chairman and the Inspector General, a scenario often referred to as teething problems.²⁰⁸ Despite these challenges, the commission has moved the police reform forward by putting in place a number of priorities.

²⁰⁵ Interview with K-Int1

²⁰⁶ Interview with K-Int1

²⁰⁷ Interview with K-Int1

²⁰⁸ Interview with K-Int1

4.3.2.2.4 Institutionalising External Accountability: The Independent Policing Oversight Authority

So who is going to give us answers to these acts? Nobody! That is why the hostility between the public and the police will take much longer in this area than elsewhere.²⁰⁹

Police oversight and accountability is at the heart of any police reform process. OECD-DAC recognises accountability as a key plank of any reform process alongside the establishment of effective governance, improved delivery of security and justice services and development of local ownership (OECD DAC, 2007). In Kenya, police accountability was a major issue in the design of police reform agenda. Three strands of accountability suggested by Auerbach (2003) are discernible in the Kenyan context. These include; popular accountability, legal accountability and transparency.

Popular accountability is manifested through mechanisms that subordinate the police to the people, who exercise their 'sovereign power either directly or through their democratically elected representatives' (GoK, 2010) and through engagement between the police and the community. Legal accountability entails police 'compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms' (GoK, 2010) while transparency is manifest in the constitutional requirement that the police does not act in a partisan manner while discharging its duties. Thus, processes such as recruitment and vetting are deemed to be part of envisaged transparency. A closer look at these three types of accountability in Kenya points to the fact that police accountability has its anchorage not only in the constitution but also the pieces of legislation and recommendations that drive police reform agenda.

Whilst these were discernible in terms of how the reform agenda was constructed, the interviews revealed that 'acceptance of that

²⁰⁹ Interview with CSO3

accountability by the National Police Service itself is a challenge²¹⁰ and members of the public are yet to hold the police into account and gain the public trust despite numerous efforts towards the same. For example, in one interview, it was obvious the public is still asking questions of over one hundred people killed by the police in Kisumu during the 2007 post-election violence and the recent incident in which 'people were herded into a kiosk and the door of the kiosk was locked from outside with a padlock and set the kiosk ablaze'²¹¹.

External accountability ensures that the police are answerable and responsible for their acts of omissions and commissions to an entity or authority from without the police. As already indicated, the Kenyan constitution promulgated in 2010 insubordinates the police to the people through their elected representatives thus providing for civilian oversight of the police. This oversight is both at the supervisory level and through handling of complaints against the police from members of the public. At the supervisory level, Articles 10-12 of the National Police Service Commission Act (KCLR, 2011b) make the National Police Service answerable to the National Police Service Commission, a civilian authority legally empowered to exercise authority over the National Police Service and ensure that the police maintain acceptable standards of service delivery to the citizenry.

In terms of complaints from members of the public, the Ethics and anti-Corruption Commission, Kenya National Human Rights and Equality Commission, Commission on Administrative Justice, also known as ombudsman and parliamentary committees all provide oversight on public officials including the police. While ensuring the police act within the law, establishing whether these complaints are effectively addressed still remains a challenge. For example, interviews with key informants from the Kenya National Human Rights and Equality Commission and Commission on Administrative Justice revealed different levels of engagement in relation to police oversight. While the KNHREC work is

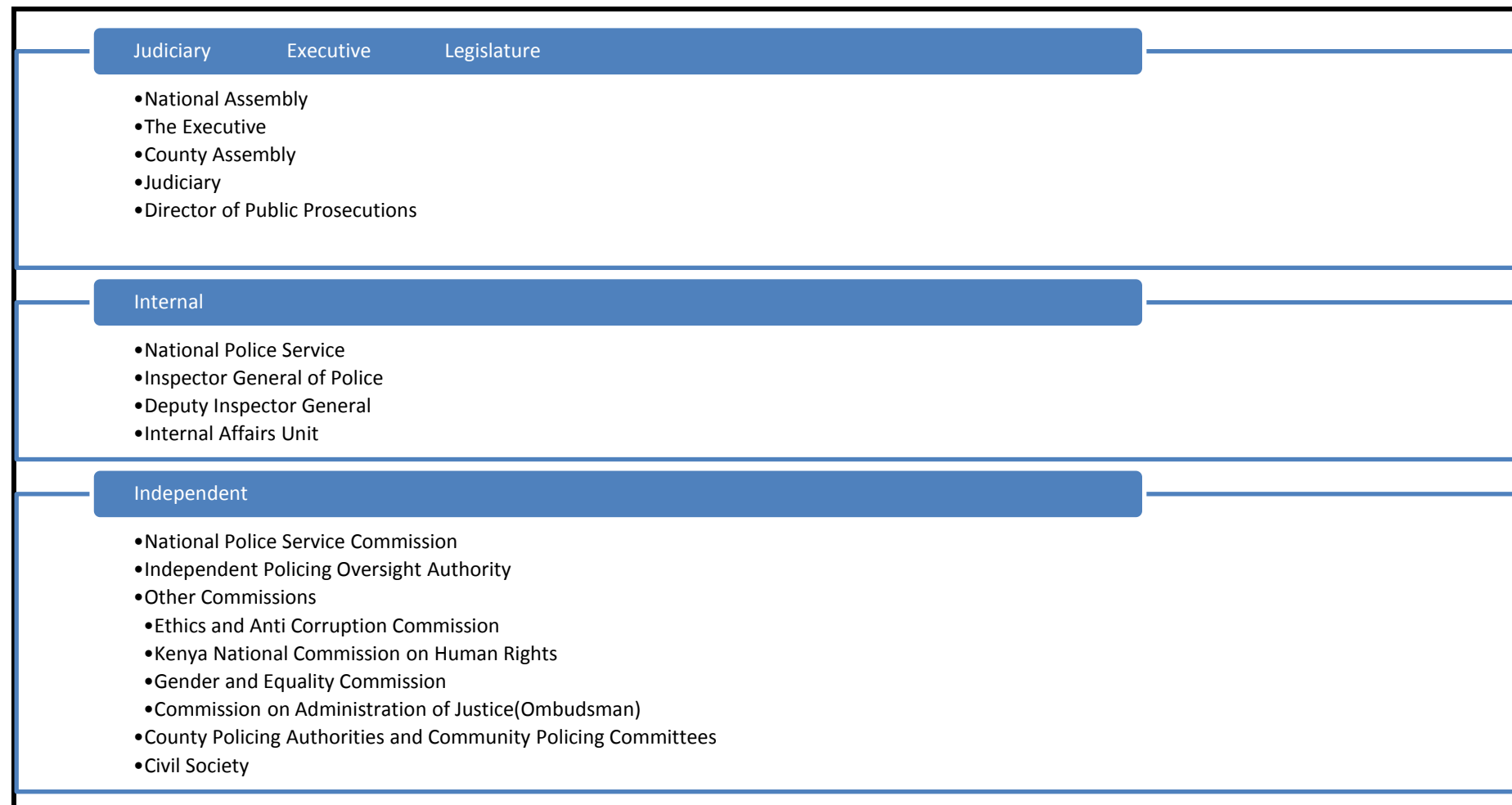
²¹⁰ Interview with K-Int2

²¹¹ Interview with CSO3

mostly tied to civil society organisation, both Usalama Reforms Forum and Police Reforms Working Group, the commission on Administrative remains more of advisory.²¹² An overview of police accountability mechanism in Kenya is presented in Figure 3 below.

²¹²Interviews with K-Int4 and K-Int5 respectively.

Figure 3: Police accountability mechanisms in Kenya



Adapted from: HRI (2014)

While these organisations have existed even at the height of breakdown of accountability of the police, they did not leave remarkable impact in providing oversight of the police for various reasons including lack of independence, lack of support, weak legislative anchorage. It is for this reason that there was the recommendation that an independent oversight body be established specifically to deal with complaints against the police. The Waki commission recommended the establishment of an Independent Civilian Oversight Authority (Waki Commission, 2008, p.482) while constitutional reform process included strong component of police oversight in various drafts and in the promulgated constitution of 2010. Furthermore, Philip Alston also put a strong case for police oversight in his report ` (Alston, 2010).

With all these under consideration, the Ransley team also did recommend the establishment of an independent oversight authority specifically dealing with complaints against the police. It is for this reason that the Independent Police Oversight Authority (IPOA) was established,²¹³ not only to benefit the police but to also develop confidence from members of the public that their complaints against the police are being looked into. In recommending this authority, the team provided what it considered prerequisites for the success of effective oversight in a number of jurisdictions. Key amongst these include, independence, adequate funding, police cooperation, political support, power to review patterns of police behaviour, and power to enforce decisions. Interviews revealed that some of these conditions do exist with reference to IPOA. For example, asked whether IPOA is sufficiently facilitated in its operations, a key informant was quick to respond thus:

“We are facilitated. We've not had any issues with the government, we've not had issues with the executive, and we've not had any issues with parliament. In terms of facilitation, we'd actually be

²¹³ The Independent Policing Oversight Authority (IPOA) was established through an Act of Parliament published in November 2011 and the inaugural Board sworn into office in June 2012.

demonising any of the institutions if I were to say we've not been facilitated.”²¹⁴

The above response does suggest that a number of pre-requisites for effective oversight suggested by GoK (2009, p.86-88), for example in this case, independence, adequate funding, political support are in place. However, whether these translate into actionable recommendations by IPOA remain in doubt.

A typical case is that in which IPOA had previously objected to the appointment of certain individuals to key positions in the National Police Service based on the evidence they had gathered from the public. However, their recommendations against the appointments were disregarded thus raising questions about the ability of IPOA to effectively provide oversight of the police service. Does IPOA really have powers to enforce decisions or at least call for explanations when there is no compliance? This question is critical for effective oversight to be achieved. Commenting on this, the Ransley committee observed that a strong civilian police oversight should have statutory power to follow up on recommendations to ensure that they are implemented failing which it should have further powers to enforce such implementation in a court of law (GoK, 2009).

The response from a key informant in relation to this question does suggest that as currently obtaining, IPOA does not have the ability to enforce decisions; neither does it have the ability to call for explanations in the case of non-compliance. A classical case is with the recruitment of the Director of Criminal Investigations in which IPOA had objected to the appointment of Ndegwa Muhoro as the Director. The key informant had this to say;

As to the implementation, for instance now I am sure you are referring to the appointment of the Director of the Directorate of Criminal Investigations, which was a decision we took as IPOA. We

²¹⁴ Interview with K-Int2

passed the mantle to the president and the prime minister then and our work ended there it was their responsibility to take it up from there if they chose to ignore it as far as we are concerned we have finished our work.²¹⁵

Apart from the IPOA lacking in the ability to enforce their decision; acceptance of that accountability by the National Police Service itself is a challenge.²¹⁶ For example, interview with two senior officers in Kisumu revealed that amongst the police officers, IPOA is seen as an impediment to the operations of the police.²¹⁷ The first ever prosecution case against a police officer by IPOA was against Pangani Officer Commanding Station (OCS). The officer was accused of concealing vital information in favour of the police. The Inspector General of Police however while addressing County Security Teams Rapid Results Initiative meeting in Nairobi on 07/04/2014 urged the police not to be distracted by the case and asked them to continue using their firearm within the law, something that was construed to mean shoot to kill order amongst human rights activists.

Despite these difficulties, and the fact that police oversight is totally a new concept in Kenya, there is evidence to demonstrate that the effort towards building an effective external accountability through the Independent Policing Oversight Authority is on course. To start with, the institution is building its capacity and is currently in the second phase developing a 'strategic document that will guide the organisation for the next three to five years.'²¹⁸ The first phase involved putting structures relating to the organogram of the organisation, setting up the regulations, setting up the policies, the recruitment strategy, the vision and mission of the institution, looking for the physical infrastructure and setting up the ICT infrastructure.

Whilst this has been happening, the impatience of Kenyans wanting to see results is also being addressed. To this effect, the authority is carrying out various investigations which vary and include; death and serious

²¹⁵ Interview with K-Int2

²¹⁶ Interview with K-Int2

²¹⁷ Interview with NPS2

²¹⁸ Interview with K-Int2

injury, sexual harassment by members of the police service, members of the police also complain against the police themselves, unprofessional conduct including rudeness, involvement by the police in crime, recklessness and inability to perform. Most of the complaints are ‘against the members of the police service. The traffic particularly is the one that you receive complaints any particular day.’²¹⁹ The authority has also conducted a baseline survey that will help pick indicators to determine if there is progress in the National Police Service. This is particularly important ‘because the effectiveness or otherwise of Independent Police Oversight Authority will be gauged on whether there are changes within the National Police Service itself or not.’²²⁰ If going forward people do not see any fundamental change within the police service, it would mean that the accountability mechanism is not working. By the time of writing this thesis, IPOA had made tremendous efforts in ensuring external accountability of the police (IPOA, 2014).

4.4 Micro Level Elements of Police Reforms

4.4.1 Police Command

Two police chiefs presided over police reform during the period 2009-2014; Mathew Iteere, the last Commissioner of Police, and David Kimaiyo, the first ever Inspector General of police. The reform trajectories under the two police chiefs have been different. Iteere’s tenure was characterised by very little reform due to lots of resistance to reform at higher levels of police command. In fact, it was during this period that Eric Kiraithe, the then police spokesman announced that the police would be unwilling to have a civilian as the Inspector General (Ogemba, 2012). No rebuttal was given regarding Kiraithe’s statement, thus suggesting that it was the official position of the police command.

Iteere’s role in the reform process as the police chief elicits mixed reactions from stakeholders in the police reform process. Some members

²¹⁹ Interview with K-Int2

²²⁰ Interview with K-Int2

of the civil society groups claim it was difficult 'to work with the former commissioner of police Mathew Iteere who seemed to be difficult to even just give audience.'²²¹ The rigidity in opening up was due to uncertain future the top police officers faced if reforms were to be undertaken. Reforms meant losing their jobs hence the resistance (ICG, 2013).

Because Iteere had reached the peak of his career and his stint was transitional, there may not have been the motivation to embrace reform. In fact, it is during this time that the country witnessed heightened insecurity not only targeting the public but also the police. For example, in August 2012, nine police officers were amongst the thirty eight people killed Tana River ethnic conflict between Pokomo and Orma. Three months later on November 10, 2012, forty two police officers pursuing Turkana raiders were killed in Suguta Valley as they pursued the raiders who had stolen livestock from the neighbouring Samburu community.

Despite the internal security challenges during Iteere's tenure, the fact that Iteere allowed for a comprehensive study by Usalama Reform Forum to determine what ails the police in terms of service delivery is significant.²²² Though little was achieved in reform during Iteere's tenure, his performance was a conflation of both macro interests of the political elite and the institutionalised systemic rot in the police. In essence demonstrating how the macro decision of replacing the police chief impacted on the reform process. Iteere did not apply to retain his job under the new title of the Inspector General, which was filled by David Kimaiyo through a competitive process. David Kimaiyo was sworn in as the first ever inspector general of police on December 24, 2012, only three months to the 2013 general elections. Kimaiyo's immediate role was to ensure public confidence in the police is restored and that there is no repeat of the cycle of electoral related violence (ICG, 2013).

Kimaiyo's appointment drew lots of excitement and expectations. The position of the Inspector General was a new phenomenon in Kenya with

²²¹ Interview with CSO5

²²² Interview with CSO5

the successful applicant being the first ever to enjoy security of tenure and independence under the new constitution. With this clout, it naturally followed that the recruitment process of the office holder would generate lots of debate.

First, the PRWG though lauded the process, opposed the appointment of Kimaiyo over claims he needed to be investigated over his role in the 2007 post-election violence as director of police operations and circumstances under which he was transferred to the Ministry of Gender (KHRC, 2012). Secondly, a section of the Kenyan society, particularly those affiliated to president Kibaki felt the timing for the appointment was not ideal as rushing with the appointment would be 'a threat to national security' ahead of the 2013 general elections.²²³ However, the newly established NPSC was determined to ensure that the country goes to the polls under a new inspector general of police despite opposition from sections of the civil society groups that such appointment would be a threat to national security during electioneering period. Thirdly, resistance to a civilian inspector general from the top police command generated a lot of debate and still remained alive even after the process was completed. Some members of the public claimed that the choice of uniformed police officers as the IG was predetermined. For example a chief executive officer (CEO) of a private security company who applied for the IG position noted the NPSC wanted uniformed officers due to resistance to a civilian inspector general by the top police command and so did not shortlist civilian applicants.²²⁴

The NPSC however denied this claim, though acknowledged that police resistance may have dissuaded qualified civilians from applying for the IG position. 'It's like those who were really the cream kept away from it so we ended up with a police officer.'²²⁵ Probed why the commission did not find it necessary to re-advertise the vacancy for the inspector general, the key

²²³ Investigations however reveal that those calling for delays did not trust the NPSC to nominate an inspector general sympathetic to their cause. This issue is revisited in chapter five

²²⁴ Interview with K-Int6

²²⁵ Interview with K-Int1

informant noted NPSC was determined to have the inspector general oversee security arrangements for the 2013 general elections. This move was important as it was the first step to determining police readiness for the reform process after the police poor show in the 2007 elections. Apart from the inspector general position, the recruitment of the two deputy inspector general positions and the director of the criminal investigations remained a contested issue from amongst the political elite. The controversies mainly relate to the prevailing politics of coalition government and are developed in Chapter 5.

The police command remains a subject of interest for different stakeholders in the reform process, the argument being that the slow pace of reform is due to the inability of the police command to spearhead reforms. For example, a key informant working closely with the police observed that ‘these people are not able to get their act together. The problem lies with their strategy. They don’t seem to have a strategy’.²²⁶ Yet another respondent noted that police leadership ‘is about instilling certain ethos, certain accountability methods in an institution and building a completely different institution with a different culture’,²²⁷ which it is claimed is missing under current police command. Giving examples of the reforms in the judiciary and the KWS under Dr.Willy Mutunga and Julius Kipng’etich respectively, some respondents argued that recruitment of the inspector general from amongst the serving police officers meant a lost opportunity in the police reform process as reforms come from without. They observed, ‘Mutunga has done what he has done simply because he came from outside. If he was one of them, I am sure he would not have achieved what he has achieved today’,²²⁸ and that within one year of office, Kipng’etich transformed KWS into ‘one of the best competent, capable agencies.’²²⁹ Where there are other institutions for example the judiciary and the KWS that have done relatively well in the reform process, they become the yardsticks upon which the police reform

²²⁶ Interview with K-Int2

²²⁷ Interview with CSO2

²²⁸ Interview with K-Int6

²²⁹ Interview with CSO2. The exit of Kipng’etich however saw an increase in incidents of poaching which is currently subject of debates in wildlife preservation circles.

process is determined. This however ignores unique characteristics of the institutions. For example, the level of political interference and the institutional culture at the macro and micro levels within the police represent divergent trajectories that should be considered in any form of comparison.

Whatever the debates about police command, there was overwhelming evidence that stakeholders did not have confidence in police leadership to steer the reform process. Though the process of recruitment of police leadership was competitive, there were perceptions that it failed to get the right people for the jobs. These sentiments perhaps contributed significantly to the changing of the law that gave top security chiefs security of tenure so that in the event of ineptitude then they could be removed easily from office. The Security Laws Amendment Act of 2014 (GoK, 2014) achieved this, effectively giving back the executive the right to hire and fire the Inspector General thus returning the country to where it was before the post 2007 police reform.

4.4.2 Police Welfare

I feel disgraced that an officer can work for thirty years as a constable, and that's the worst crime you can commit to a police officer. Imagine a police officer spending thirty years as a police constable.²³⁰

Looking at the situation of the welfare of police officers in Kenya, one has the feeling that lots of crimes have been committed to the officers as captured by the comments from the above interviewee. Everything regarding the police welfare as defined by the Force Standing Orders Chapter 53 (1)²³¹ seemed to have broken down yet there has never been significant effort to address the situation until the post 2007 reform. Experiences from countries that have attempted to professionalise police service show that they spend huge resources towards the welfare of the

²³⁰ Interview with CSO2

²³¹ These include but not limited to general comfort, adequate water supplies, recreation facilities, provision of canteens, counselling and visits to sick officers, (GoK, 2009)

police officers. Countries visited by the Ransley team for benchmark studies provided enough lessons about investment in the welfare of the police service.

Housing conditions, salaries and allowances, performance management and appraisal, promotions and post-service welfare (GoK, 2009, p.124 - 158) still remain issues of concern in terms of police welfare. A number of initiatives have been undertaken though the process still falls behind schedule. For example, the police now have a comprehensive insurance cover with effect from July 1, 2014, their allowances have been paid, and a programme that seeks to address police welfare has also been put in place. After months of heated exchanges in parliament over National Police Service representative in the Salary Review Commission, President Uhuru Kenyatta in April 2014 appointed James Maina Muhoro, a career civil servant to represent the National Police Service in the Salaries Review Commission (SRC) to take care of the police welfare. The police had been left out in the establishment of the SRC as the NPSC had not been established. Additionally, the government provided Ksh.4 billion to facilitate modernisation of the National Police Service (Wabala, 2014).

Prospects for improving police welfare look good based on the discussions with key informants. The stakeholders view this as a mandatory issue owing to how the reform agenda was built which put police welfare at the centre of reforms. A respondent working with the police noted that despite challenges facing the reform, the police are glad that 'for the first time this constitution gave us face. We have an opportunity today to go back to school (sic) get promotions'.²³² While the prospects for improving police welfare look positive at least in the long run, police reform in the short run seem to focus more on institutions of reforms and enhancing police capacity at the expense of police welfare.

In the 2014/2015 budget estimates for example, out of the Ksh.66 billion to the police service, some Ksh.29 billion would be used directly to

²³² Interview with CSO2

enhance security, while Sh6.7 billion would be used for leasing of police vehicles and aircraft. Police equipment would be purchased at Sh3.5 billion while Sh1.8 billion has been set aside for the Command and Control Centre while the ongoing security operation dubbed 'Usalama Watch' had Sh3.3 billion allocation. However, there was no allocation for salary increment. This perhaps helps explain why the process of addressing welfare issues in the police has been slow. For example, a respondent captured this failure to put police welfare at the centre of police reform discourse thus;

'So far the focus has been on the Inspector General's office. People are just looking at small things; the wrangles that are there, which office, should he be wearing a uniform in public or what he should be wearing you know.'²³³

Alongside the welfare of the police officer is their working condition in the police stations. Three police stations visited during data collection; one in Nairobi and two in Kisumu, demonstrate that modernising the Kenyan police stations is still not possible in the short run. The image of the working conditions in Kenya police stations is appalling to say the least.

Horrendous working conditions of the police in Kenya have been widely reported.²³⁴ A respondent described the situation in the police stations thus:

'The kind of police stations we have I mean you will be shocked, like the evidence room my God it looks like a store'.²³⁵

Despite this situation, public discourse on police working conditions is not given enough prominence in the police reform debate. Why is police welfare not prominent in the discourse on police reform? The problem, according to one respondent lies with everyone. However, the media and civil society take huge blame as they form the agenda for advocacy. The

²³³ Interview with CSO1

²³⁴ See; IPOA (2014);Usalama Reforms Forum (2014c)

²³⁵ Interview with CSO1

focus of the media and the civil society has so much been on irrelevancies including infighting between the office of the Inspector General and the National Police Service Commission. Secondly, the police also have their share of blame for failure ‘to come out and really try to push for whatever their agenda’²³⁶ which is lost in the reform discourse. Though there are indications that police welfare is receiving attention, this attention still falls far short of both public and police expectation.²³⁷

4.4.3 Police Recruitment and Training

For a long time, nepotism and ethnic discretion have determined recruitment into the Administration Police and the Kenya Police. Thus the quality of recruits has been wanting with the police force considered a dumping ground for those with low academic qualification. The process has been riddled with corruption with prospective candidates paying bribes of as much as Ksh.100,000 to be recruited (GoK, 2009). It is with this in mind that the review of the recruitment process and recruitment of more police officers was included as a reform package in the post 2008 police reform package. The former, because professionalizing the police begins with the calibre of officers, their predispositions and qualifications and the latter, to bring the police-population ratio closer to the acceptable UN standards.

Thus, the review of the recruitment process started with public participation in the recruitment of the inspector general and his deputies. This was followed with the recruitment of the constables which was also markedly different from the previous recruitment processes. The first recruitment of constables under the NPSC was undertaken on November 22, 2012. Unlike in the past, this process sought to address gender bias and ethnic imbalance in the police population.²³⁸ It also set new entry criteria with a minimum entry level of a mean score of C plain in Kenya Certificate of Secondary Education (KCSE) compared to previous D+ entry level, ‘except for areas where this was not possible, C- (C minus) or

²³⁶ Interview with CSO1

²³⁷ See Chapter 6 for elaboration.

²³⁸ Interview with K-Int1

in extreme cases D plus was accepted' (Usalama Reforms Forum, 2012). The NPSC set up recruitment committees including the local District Security Intelligence Committee to oversee the process in 289 centres. The Ransley Committee proposed that 'Recruitment of police officers should be done by the Police Service Commission while the District Security Intelligence Committees will support the PSC with the vetting of the candidates' (GoK, 2009, p.109).

Whilst the recruitment process was not perfect, there was remarkable improvement from previous processes. Civil society groups monitored the process and returned a fair verdict on the process. For example, a report by Usalama Reforms Forum concludes that 'the recruitment process was transparent, fair and open to public participation' (Usalama Reforms Forum, 2012, p.7). A few weeks to the pass-out parade in April 2014 however, the Industrial Court sitting in Nairobi gave orders stopping the pass-out parade of the recruits on allegations that the recruitment and training were not transparent. A local civil society organization, Kenya Council of Employment and Migration Agency (KCEMA) claimed NPSC replaced 1,900 recruits who had on January 25, 2013, been sent away from Kiganjo and Embakasi police colleges for having fake documents and others being pregnant (Kurian and Ombati, 2014). Despite these orders, the pass-out parade went on as planned and some 1000 police officers were added to the police roll.

The 2014 recruitment was a complete departure from the 2012. The minimum qualification was reduced to D+ (plus). The process was also riddled with claims of corruption, nepotism and tribalism. The gains made in the reform process were reversed with this single exercise. Civil society groups, the Ethics and Anti-Corruption Commission and the Independent Policing Oversight Authority called for cancellation of the process while the Parliamentary Committee on Administration and National security called for postponement of the reporting day initially scheduled for 3rd October 2014. The NPSC acknowledged indeed there were problems and formed an Inter-Agency Working Group (IAWG) committee including NPSC, EACC, NIS, and CID to investigate. IPOA opted not to be included

in the working group arguing that there would be no fairness as only the EACC did not participate in the recruitment and that it lacked constitutional and statutory requirement of transparency and accountability.

The committee cancelled the exercise in thirty six centres which affected 1215 recruits.²³⁹ Meanwhile, IPOA, which had called for cancellation of the whole exercise, convinced the High Court that the recruitment process did not meet the required standards and therefore had the process nullified.²⁴⁰ The cancellation drew mixed reactions from all stakeholders. Civil society groups and opposition politicians hailed the court's decision; while some Members of Parliament allied to the ruling Jubilee Alliance accused the courts of meddling in the reform process and interference with the government's pledge to create jobs.²⁴¹

Though the police recruitment in the year 2012 was considered fair across the board, 2014 recruitment was largely rejected and reflected inherent problems in police enlistment that have existed for many years (see Figure 4 below).

Figure 4: Police recruitment exercise



Source: <http://gadocartoons.com/mp-underwent-police-recruitment/>

²³⁹ See; Wanyama (2014)

²⁴⁰ Ogemba (2014)

²⁴¹ See; Weru & Lucheli (2014)

Whatever the stakeholder positions, the High Court ruling set the precedence that transparency is an essential ingredient in police recruitment. It served to make future recruitment exercises more transparent. In fact, after the ruling, the Interior Ministry and the NPSC moved to publish The National Police Service Commission (Recruitments and Appointments) Regulations 2014, which would streamline the recruitment process.²⁴²

Post 2008 reform also considered training of the police. Previously, fresh recruits were trained for nine months in three police training schools at Kenya Police Training school at Kiganjo, General Service Unit (GSU) training school and the Administration Police Training School (APTS) at Embakasi. The reforms relating too training meant that officers who joined the service after completing the fourth form undergo a 15 months training and a three month internship. Those who joined the with a university degree undergo training for a 21 months including a three month internship training.

The curriculum for training of the police officers has also been transformed to incorporate the emerging trends in policing. Alongside the review of training period and the curricula, the police also collaborate with Kenyatta University Institute of Peace and Security Studies to offer degree programmes, diploma and certificate in security management and police studies. Most of these courses have attracted huge number of police officers who are either self-sponsored or state sponsored.

4.4.4 Vetting of Police Officers

‘Vetting is a key crucial aspect of police reform’.²⁴³ It entails a formal process for the identification and the removal of individuals responsible for abuses, especially from police, prison services, the army and the judiciary (Finci, 2007, p.24). Most often these are institutions noted to have committed human rights violations or allowed the violations to happen. In

²⁴² See; Maina (2014)

²⁴³ Interview with CSO2

the context of Kenya, two vetting processes have been undertaken as a result of the 2007 post-election violence, namely; the vetting of the judges and magistrates and the vetting of the police undertaken by the Judges and Magistrates Vetting Board and the National Police Service Commission Committee respectively. The two processes have had their fair share of problems, particularly with respect to court cases challenging the processes. At the time of writing, a section judges found unfit to serve had challenged the decisions and the legality of the board at the Supreme Court.

Vetting of police officers sought to exclude from the service police officers found to have violated human rights and aimed at 'infusing professionalism and competence in the police force (sic) and making the service more accountable to the public'.²⁴⁴ It was a certification process where serving police officers were screened to determine their suitability for continued service. If on the basis of a defined criteria an officer was found fit to serve, s/he would be certified and retained or dismissed if unfit to serve.²⁴⁵ The first attempt to vet police officers was in June 2011 where 1112 officers in the rank of Superintendent and above undertook psychometric testing (United Nations, 2012). After complaints from the police and members of civil society, the process was stopped to await the operationalisation of the National Police Service Commission which is mandated to carry out vetting process.

Vetting of all police officers is provided in Article 246(b) of the constitution, and the NPS and NPSC Acts under Articles 7 and 28 of the police acts respectively. Under the former, 'all officers shall undergo vetting by the Commission to assess their suitability and competence' and 'the Commission shall discontinue the service of any police officer who fails in the vetting' (KCLR, 2011a). Despite these provisions, there were fears the process would not be done or would be bungled as pointed by an

²⁴⁴ Interview with K-Int1

²⁴⁵ The applicable vetting criteria included officers' satisfaction of entry and training requirements, their professional conduct and discipline, integrity, financial probity, and respect for human rights.

informant, 'they will not do it, and if they do it they will stage-manage it.'²⁴⁶ These remarks were informed by the strong resistance from the police officers. However, after cabinet approval, the process begun on December 17, 2013 and was expected to proceed for eighteen months when all police officers will have been vetted.

While the public welcomed the idea of vetting, there were mixed feelings regarding the process. First, the process was criticized as unclear and lacking in transparency with regards to the composition of the vetting committee. Secondly, during the first phase of vetting, the vetting committee allowed for a two week window period for public submission on the suitability of senior police officers. The Police Reform Working Group considered this inadequate and petitioned the committee for more time. Thirdly, there was also the feeling that the Inspector General, his two deputies and the Director of Criminal Investigations needed to be vetted. The Police Reforms Working Group argued that leaving out the topmost officers would undermine the process.²⁴⁷

Whilst it was the responsibility of the NPSC to undertake the vetting process, three members of the 'nyumba kumi initiative'²⁴⁸ were co-opted under unclear circumstances. In particular, the integrity of Joseph Kaguthi was a major issue since he was adversely mentioned in the TJRC report for complicity in the Wagalla massacre (TJRC, 2013).

Attempt to establish at what point three members of Nyumba Kumi initiative got involved in the vetting process revealed that the taskforce had nothing to do with the vetting process and that the three Nyumba Kumi members in the vetting committee were appointed in their individual capacity by the National Police Service Commission.²⁴⁹ Whether by coincidence or design, their absence from the taskforce on community policing during the vetting period slowed down the core activities of the

²⁴⁶ Interview with CSO2

²⁴⁷ Interview with CSO7

²⁴⁸ This literally means ten families. It is a community policy strategy adopted by the government due to runaway insecurity witnessed in the country in the wake of Westgate attack. This is further explained in the next section.

²⁴⁹ Telephone conversation with K-Int9

taskforce. This revelation further complicates the purpose for which the taskforce was formed, suggesting that its mandate was not very clear and that it remained so until the members pulled out of the vetting committee.

In February 2014, just before the third round of the vetting process, Nyumba Kumi taskforce members including Francis Sang, Werunga Simiyu and Joseph Kaguthi resigned from the vetting committee. Conflicting information was given for their resignation. There were claims of infighting amongst the members particularly in relation to the vetting of three police officers whose vetting decision was postponed to allow for further investigation. Simiyu was quoted saying they did not want to spoil their reputation in an exercise that lacked transparency, with the media mentioning the vetting of three officers²⁵⁰ as being the reason for their exit, while Kaguthi cited conflict of interest with Nyumba Kumi initiative. Whatever the reason, the resignation sent a negative signal to the process and confirmed the fears of the stakeholders that the process would be a rubberstamping process. Specifically two police officers cleared had lost confidence in the eyes of the public and that they were cleared by the vetting committee did not go down well with sections of the Kenyan society despite an investigator disclosing that there was no evidence to incriminate the officers.²⁵¹ The question then is, did the vetting process meet the expectation of the public while at the same time ensuring fairness in the process?

The manner in which the process was handled suggests lack of proper prioritisation of the process despite the strong mandate the process received in the constitution and in the police reform laws. That the process is being handled by the NPSC makes it difficult for the institution to focus entirely on the police reform agenda. Perhaps, the vetting formula for the judges and magistrate should have been applied, with the independent board vetting the serving police officers within a stipulated

²⁵⁰ Senior Police officers Kingori Mwangi, Gideon Kimilu were accused of drug trafficking links while Peter Pamba was accused of financial impropriety involving allowances for officers. The committee found that accusations against them could not be substantiated and declared them fit to serve.

²⁵¹ Interview with K-Int8

period after which the NPSC would be responsible for the vetting of new officers.

Whilst the impact of the vetting process cannot be ascertained in the short run, it no doubt established conditions generally considered necessary for establishment of an independent and professional police service. The process was characterised by lots of interest from the Kenyan public at the national level and remained ignored at the lower levels, perhaps signalling the disappointment with the process. Fears the process may not yield the intended outcome thus remained alive.

4.4.5 Internal Accountability

The establishment of IPOA at the macro level was not only meant to improve external accountability but also sought to 'improve the quality of internal investigations of the police, reassure members of public that the police will investigate complaints thoroughly and fairly, discourage police misconduct and improve police policies and procedures' (GoK, 2009, p.90). In this respect, the Internal Affairs Unit (IAU) was established to investigate complaints against police officers. Despite establishment of the Internal Affairs Unit, there was little evidence of progress in the development of internal accountability. The system continues to face a lot of resistance from within, especially from the higher ranks, and lack of coherent accountability strategy. The police 'don't seem to have a strategy' for 'a clear accountability mechanism which has broken down, starting from the top going up to the station level.'²⁵²

Where police leadership has been hard pressed to explain crimes committed by the police, police leadership has always considered these a case of a few rotten apples.²⁵³ However, the argument is that if these criminals are not identified and weeded out in time, 'it means there are systemic managerial failures because with good management structures you will be able to pick out the failures in the police service and rectify in

²⁵² Interview with K-Int2

²⁵³ Interview with K-Int3

time.²⁵⁴ At the station level, the point where the common man feels policing, the officers commanding station are not able to account for the police officers within the station. The system as currently stands is unable to make line managers accountable and as such the rank and file are not accountable thus systematic failure in the way policing is delivered at the community level.

The vetting process of senior police officers perhaps demonstrates the extent to which accountability mechanism in the police service had broken down. For example, it emerged that a Deputy Commissioner of Police had been earning a salary yet doing nothing for a period of one year, a period which he was still waiting for deployment from his seniors, apparently the Inspector General and his deputies, who happened to be members of the vetting committee. The Inspector General and his deputy could not account for what the officers had been doing for one year and were not subjected to explain why taxpayers' money was spent for services not rendered by the officer.

Two factors seem to affect the actualisation of the Internal Affairs Unit. These include lack of capacity and the attitude of the police officers. First, during the police vetting exercise, it was clear the unit was yet to pick up. The head of the unit Leo Nyongesa was hard pressed to explain the achievement of the unit eight months down the line. Aside from that, the difficulty the head of the unit experienced while explaining the mandate of the unit points to some incompetence in initiating internal accountability within the wider police reform process and that his office lacked equipment and personnel. As for the capacity, the officer noted thus;

'Internal affairs unit is a baby. We are in the process of establishing the unit and recruiting staff. There are so many complaints but we do not have the capacity.'²⁵⁵

²⁵⁴ Interview with K-Int2

²⁵⁵ Interview with NPS7

Despite these challenges, the unit was working with the Ethics and Anti-Corruption Commission to arrest corrupt officers and was also holding sensitisation workshops. By the time of writing this thesis, the unit had 'recommended about 20 cases for disciplinary action'.²⁵⁶

Secondly, there is a hostile attitude towards the establishment of accountability amongst the police not only to the IPOA, but also to allowing the authority to have oversight role on the operations of the IAU. This element of hostility derives from the conversation with the police officers involved in the development of the standing orders which was being facilitated by Usalama Reforms Forum. It was also obvious that the officers participating in the process were jittery about involving IPOA in the development of accountability mechanism for the police. An officer observed that, 'we should not bring IPOA too much in the operations of Internal Affairs Unit'.²⁵⁷

The above statement suggests not only resistance towards to IPOA but also the wish of the police to remain 'closed and secretive'. Most important, it demonstrates that the distinction between the role of IPOA and the IAU is yet to crystallise amongst the officers. More startling is the fact that even amongst the police officers participating in the process, some did not have confidence in their seniors to get the unit running as most of the complaints likely to emanate from the Internal Affairs Unit would be against top police officers. Asked why they were engaged in an exercise whose success they doubted, an officer retorted, 'We were protecting out jobs'.²⁵⁸

While the above discussions cast aspersions in the process of actualising the Internal Affairs Unit in the police service, there is hope that the unit will be up and running given the level of external support the unit is getting from external actors. At the time of writing, the UNODC Regional Office for Eastern Africa had advertised for the position of a consultant to help

²⁵⁶ See more at: <http://www.the-star.co.ke/news/article-149752/senior-cops-put-task-about-their-leadership#sthash.qHVkGGpD.8FolyIEz.dpuf>

²⁵⁷ Interview with anonymous officer

²⁵⁸ Interview with anonymous officer

with the operationalisation of the IAU with the specific mandate to provide technical assistance and advisory services to all stakeholders. Secondly, with the hindsight of resistance from the police, and that the issue of police oversight and accountability is a new phenomenon in Kenya, the IPOA has embraced external support as critical in moving forward accountability element in the police. These efforts are captured thus;

we have technical people that we brought in because we also know that there are some areas we know require professional guidance. We brought in an investigations consultant from New Zealand who is very competent because we know that police oversight authority is a new phenomenon in Kenya. We did not want to start making mistakes so we brought in somebody of that level. When we were setting up the structures we also brought in a consultant from Holland, this is somebody who is rated amongst the top ten in the whole world in terms of setting up accountability mechanism in the police service.²⁵⁹

Whilst there was evidence that internal accountability is yet to be accepted by the police, especially at the higher levels, and that there is very strong anti-IPOA and other external accountability mechanisms sentiments within the rank and file of the police, the symbiotic relationship between external and external accountability mechanisms makes it impossible for sustained opposition to accountability. However, given the fact that the police service is still in the process of establishing the internal accountability mechanism, it is still early to determine the extent to which this has been influenced by demands from external accountability.

4.5 Conclusion

This chapter has focussed on the implementation of the post 2007 police reform processes, at three levels namely, macro, meso and micro levels. From the analysis, the police reform process in Kenya is progressing at a slow pace. The reform process still faces obstacles arising out of the

²⁵⁹ Interview with K-Int2

factors identified as pre-requisites for successful reform process by the Ransley committee.

At the macro level, political will and inadequate funding still pose a problem. Political will is manifest in the form of either support for or resistance to reforms from different stakeholders in different proportions. Though the executive and international donors demonstrate political will through improved funding and provision of resources, the behaviour of political elite and their associates remains a challenge. This incidentally runs across the entire spectrum of the levels of analysis. At the macro level, the political elite and the legislature influence the reform process by providing the reform direction, in this case eroding the gains made by the institutionalisation of the reform process. At the meso level, institutional politics involving competition amongst the institutions managing the reform process has slowed down the reform, while the indifference to the reform process by local leaders has led to strained relationship between the public and the police. This has had the net effect of undermining public participation in the reform process.

Meso level analysis focused on the institutions governing the reform process. In terms of coherence of the reform process, the absence of the National Security Policy from where the police reform strategy should derive has created a situation where reform efforts remain fragmented and characterised by poor coordination amongst various stakeholders, particularly the security actors and the other stakeholders. This challenge thus made it difficult for the police to address security challenges facing the country including; Al-Shabaab insurgency, proliferation of small arms and light weapons, corruption other forms of organised crime. Other challenges are related to the wider societal problems for example youth unemployment, poor infrastructure that make it impossible for police to respond to distress call from the public.

At the micro level, the institutional culture of the police largely remains an obstacle in addressing the structural problems in the police. Whilst the vetting exercise was expected to weed out unsuitable crop of officers at

this level, it was not clear how the National Police Service would dismantle the networks that the officers may have established over the years. The culture of secrecy, protectionism and impunity still remained dominant even in the face of the police reform process. Also, mistrust still abounds between the police and members of the public thus making it difficult for the public to win the police confidence and vice versa, particularly in relation to community policing.

Building on this chapter, particularly on the influence on politics discussed at the macro level, the next chapter provides a more detailed analysis of the influence of power-sharing on the police reform process. This is for the purpose of unpacking the political intrigues that shaped the police reform process under the power-sharing arrangement.

CHAPTER FIVE
POWER-SHARING POLITICS AND THE POLICE REFORM PROCESS
IN KENYA

5.1 Introduction

The discussions in the previous chapter suggest that lack of political-will significantly impeded the reform process prior to 2007, and remains one of the key obstacles to the post 2007 the police reform process in Kenya. This chapter provides an in-depth analysis of how politics, particularly the politics of power-sharing shaped the post-2007 police reform discussed in Chapter 4. It addresses the second thematic area in this study which explores the linkage between power-sharing politics and police reform processes in Kenya. Specifically, the chapter focuses on the fourth secondary research question thus; to what extent has power-sharing politics influenced police reform and wider SSR in Kenya?

The chapter is developed broadly around Arendt Lijphart's consociational democracy (Lijphart, 2008) which we introduced and discussed in chapter two. The chapter however does not aim to test Lijphart's theory, but seeks to use the overall framework as an organising tool for examining how power-sharing politics shaped the post 2007/08 police reform process in Kenya.

Lijphart's early consociational democracy theory focused on grand coalition, in which power is shared among different factions forming the coalition government. In the 1990s however, the descriptions developed to include three other features namely; cultural autonomy, proportionality and minority veto. Lijphart's notion of cultural autonomy means different things to different scholars. Ottmann and Vüllers (2014) consider cultural autonomy under territorial power-sharing dimension and further subdivide it into devolution and autonomy. In this chapter, as in Kanyinga (2009), devolution is used in place of cultural autonomy and involves both aspects of Ottmann and Vüllers (2014) dichotomy.

Lijphart's structures have since then been modified into primary and secondary characteristics; with the grand coalition and cultural autonomy being the most crucial, whereas proportionality and minority veto occupy lower position of importance (Lijphart, 2008). In the case of Kenya's power-sharing arrangement, we argue that all the Lijphart's devices were present and influenced the police reform process in varying degrees, though the politics of the grand-coalition and devolution remained dominant. Hence, to what extent did power-sharing politics influence police reform process in Kenya? For the purpose of investigating this question, grand-coalition and devolution are used as pillars around which the discussions revolve.

The chapter is organised into four sections. The present section (Section 5.1) includes a brief introduction to Lijphart's power-sharing theory and provides the organization of the chapter. Section 5.2 examines Kenya's grand-coalition politics and its interrelationships with the police reform process. Section 5.3 discusses the Kenyan experience with devolution and how it interlinks with the police reform process at both national and county levels. In illustrating how politics impacted on police reform process and devolution, power-sharing arrangements before the 2013 general elections in Marsabit County are analyzed. Section 5.4 concludes the chapter by highlighting key findings in the chapter.

5.2 Grand - Coalition Politics and the Police Reform Process

The analogy of 'nusu mkate' (Kiswahili for half a loaf)²⁶⁰ in Kenya's politics remains alive even after the term of the coalition government in Kenya came to an end. The phrase has become the popular political reference point for the intricacies in the politics of power-sharing in Kenya. It justifies close proximity to power by the opposition elite and the ceding of some ground by the ruling party for the sake of stability. Of interest in this section is the interrelationship between power-sharing politics under the grand coalition government and the police reform process. How did the

²⁶⁰ The phrase was promoted by Kenya's former Prime Minister Raila Odinga apparently to explain the sharing of power under the grand-coalition government.

politics of power-sharing shape, facilitate or constrain the police reform process under Kenya's grand coalition? We argue that under the nusu-mkate phenomenon, Kenya's grand-coalition was indeed instrumental in shaping Kenya's post 2007 police reform process though vested political interests threatened to derail the process and were largely to blame for the slow pace of the process.

The grand coalition facilitated the setting up of reform agenda and policy for reform. This support is not however only unique to the Kenyan situation but applies in most cases to the discussions on merits of a grand coalition as a consociational solution to deeply divided societies. First, the grand coalition provided mechanisms, for example, the Waki Commission, the Ransley Committee and the 2010 constitution that provided the framework for undertaking police reforms. These mechanisms sought to investigate the 2007 post-election violence and isolated police culpability in the violence and recommended reforms. The political players driving the process were unanimous on the need to get these processes move forward.²⁶¹ The formation of the grand coalition therefore formed a crucial entry point for police reform. It helped revitalise the police reform that had earlier stalled, due to little or no political-will from Kenya's leadership. In fact, beginning the police reform process was one of the legacies of the grand coalition as observed by this interviewee; 'I think they tried because they started of course with the implementation of the new constitution and they started this whole reform process, I mean the police reform process.'²⁶²

Apart from initiating the process, the grand-coalition provided the platform for citizen participation in the reform process. The grand-coalition is credited with 'creating the environment where members of the public for example would give their views to the National Taskforce on Police Reform.'²⁶³ This was the first major engagement with the public in the history of the republic on the kind of police service they needed. However,

²⁶¹ Interview with MP1

²⁶² Interview with MP1

²⁶³ Interview with K-Int1

this was only exercised to the extent that the National Task Force on Police reform moved around the country soliciting views from various stakeholders. Subsequent initiatives however remained under complete control of the state with very little or no input in the police reform by the non-state domestic constituencies.

Additionally, the grand-coalition created the environment for the institutionalization of the reform process. The National Police Service Commission and the Independent Oversight Authority were created - the institutions under which police reform process depended even after the expiry of the grand-coalition government. Whilst politics of grand-coalition threatened to derail the reform process, the institutions provided guarantees to the process. The politics of grand-coalition occasionally filtered into the institutions and delayed the police process; the institutions to a large extent cushioned the process from stalling even after the lifespan of the coalition government.

Whilst the constitutional review process had been contentious for over two decades, divergent interests that had been the stumbling block found convergence on the need to reform Kenya's constitution under the grand-coalition politics.²⁶⁴ This is not to say that the process was not adversely affected by the politics of grand-coalition. The PNU side appeared hesitant to support the draft constitution, with PNU-allied political elite insisting on the presidential system for fear of losing power. Post-independence Kenya had used the presidency to perpetuate patron-client networks through which state resources would benefit individuals with direct links to the presidency.²⁶⁵ ODM side insisted on a parliamentary and devolved system that would guarantee equitable distribution of resources and ensure enough safeguards against imperial presidency. In the end, the parties agreed to adopt a presidential system with devolved structures in the form of counties.²⁶⁶ Overall, power-sharing was closely

²⁶⁴ One of the primary achievements of the grand coalition government was the promulgation of the 2010 constitution on the August 27, 2010.

²⁶⁵ For further discussions on patron-client relationship in post-independence Kenya, see; Tamarkin (1978)

²⁶⁶ See Section 5.3 for further discussion.

associated with agenda setting and policy making of post-2007 police reform, but the implementation of the police reform was a different issue and which we now proceed to analyze.

Under the power-sharing arrangement, both parties wanted to control the implementation of police reform process. Critical to this claim is the desire by both parties to control key ministries through which power and resources could be distributed to various elites representing different ethnic cleavages that supported the political parties in the 2007 elections. With the PNU controlling the Finance and Security dockets, there was the perception that the party had the control of the police reform process. This perception is illustrated by a statement of a key informant involved in the implementation of the police reform process; ‘they shared the ministries and Raila did not have the police. There were ministries under ODM, there were ministries under PNU and the police were under the Office of the President, not the Prime Minister. So he did not have a say (sic).’²⁶⁷ And indeed, the ministries were in a number of times accused of interfering with the reform process. Treasury was accused of withholding funds meant for reform while the Interior Ministry was accused of frustrating the work of the National Police Service Commission.²⁶⁸

Since the prime minister was responsible for coordination of government, the delays relating to implementing police reform process were all blamed on the PM’s Office as the coordinator of government business. This is despite the fact that line ministries responsible for police reform process were directly under the presidency. In the wider political scheme, the idea of the PNU elite was to prove that the prime minister’s office was anti-reform contrary to what the ODM claimed to be the champion of reform. And this scheme filtered into the population with Odinga supporters expressing doubt on the power-sharing agreement.²⁶⁹

The tensions witnessed during the establishment of the grand-coalition government were construed by some respondents, particularly those

²⁶⁷ Interview with K-Int3

²⁶⁸ Interview with CSO7

²⁶⁹ Interview with CSO3

allied to ODM to imply that president Kibaki was unwilling to share power. This perception reinforced arguments that Kibaki was a stumbling block at the initial stages of negotiations for power-sharing arrangement (Miguna, 2012, Annan, 2012). For this reason, these respondents argued that the grand-coalition was forced on the Kenyan political elite.²⁷⁰ Under this circumstance, undercurrents and tensions were a common phenomenon in the power-sharing arrangement. Kibaki purportedly appointed Raila to the position of Prime Minister and outlined the duties assigned to him. This was later followed by a statement from the Head of the Public Service which put Odinga third in the pecking order after the President and his the Vice President (Odinga, 2013). Raila consistently complained of a deliberate scheme by the PNU allied civil servants to undermine his authority. In particular, there emerged even a stronger provincial administration that consolidated power in the presidency contrary to the proposals to disband the provincial administration in constitutional review debates.

Whilst power-sharing sought to promote accountability to the citizenry by dispersing powers previously exercised by the President in the oversight of the security forces to the independent commissions, appointments to such commissions remained contested. Political and tribal elites from both sides of the coalition primarily defined the compositions of these commissions.²⁷¹ In the process, the independence and calibre of some of the commissions were watered down, with the view to having individuals loyal to each side of the coalition in the commissions. This jostling for control of police reform commissions under the grand-coalition though a problem, was however better compared to the context of single party government. The institutionalisation of separation of power among different government organs, or power-dividing institutions,²⁷² reduced the chances of a single majority making decisions regarding police reform. Though the PNU had its way in key appointments, a different majority in parliament including both PNU and ODM parties would have a final say

²⁷⁰ Interview with CSO6 and CSO3

²⁷¹ Interview with MP2

²⁷² For further debates on power-dividing institutions see; Roeder (2005)

on who was nominated by the president. An example here is the case in which the Parliamentary Select Committee rejected the presidential nominee for the position of the National Police Service Commission chairperson.²⁷³

The political elite sought to install individuals sympathetic to either side of the coalition into the institutions driving the reform agenda. There were differences amongst members of the selection panel leading to altercations in the media. Ahmednasir Abdullahi, himself a member of the recruitment panel, disclosed that PNU side of the coalition took a laid back position in the process, thus their preferred candidate was not nominated for the chair of the commission (Abdullahi, 2012). Gachoya (2012), also a panellist disagreed that political interests, those that would enhance the power of the executive, as argued by Abdullahi (2012), seem to be driving the process and attributed the impasse to the failure of the panel to 'uphold the duty bestowed upon the panel by the citizens of Kenya' (Gachoya, 2012). This public spat between the two panellists responsible for nominating NPSC candidates, seemingly representing the interests of the two coalition partners, suggested the intrigues of political control of the police force and the police reform process - both sides of the political divide sought to have their preferred candidate nominated.

Three names were nominated to the president and the prime minister for consideration of chair to the NPSC. However, the office of the president forwarded to the Parliamentary Committee on National Security the name of Jean Kamau, who was perceived by the ODM side as the PNU preferred candidate for the NPSC chair. The prime minister rejected this nomination arguing that his office was not consulted, a move that threw into disarray the police reform process. Eventually after immense pressure from the international community, members of the civil society and other veto players, the nomination was withdrawn and the best candidate in the interview was nominated for vetting by the parliamentary committee. The committee settled on Johnstone Kavuludi as a

²⁷³ Interview with MP2

compromise candidate.²⁷⁴ To sum up this impasse, a member of the select committee on national security described the entire process as a mockery, claiming that political interests superseded merit.²⁷⁵ This phenomenon is not strange to the Kenyan context. It finds favour in the literature critical to power-sharing - particularly the fact that power-sharing leads to immobilism thus leading to gridlock in decision making especially where those wielding veto powers do not agree (Rothchild and Roeder, 2005).

Kenya's National Accord provided for consultations between the two principals, the Prime Minister and the President, without which vetoes were exercised. This resulted in brinkmanship in which each side threatened to force a deadlock in government decision making until the other side grunted further concessions. Raila's rejection of the NPSC nominees is a clear case of use of veto in a grand coalition. Other veto players including the Law Society of Kenya, the Women and the Parliamentary Select Committee Administration and National Security amongst others followed suit using judicial and parliamentary veto. While veto power was supposed to increase inclusiveness in the reform process, it created a situation in which such vetoes were used to demand concessions.

As the country approached the 2013 elections, there was lack of shared understanding on the police reform process in the grand coalition government, particularly in relation to the appointment of the Inspector General. Kibaki, having served his two terms was not active in the police reform debates while Raila, who was expected to run in the 2013 presidential elections, was actively involved in the process. PNU affiliated political elite was happy with the then Commissioner of Police and supported postponing the appointment of the Inspector General citing little time for preparation for elections.²⁷⁶ Others, mainly allied to ODM, argued that elections under the then Commissioner of Police would mean the

²⁷⁴ Interview with MP2

²⁷⁵ Interview with MP2

²⁷⁶ See; The Star (2012).

police approaching the 2013 elections with the same attitudes as it did in 2007.

The fact that divisions over the appointment of the Inspector General existed along party and ethnic affiliations inform the relationship between the police chief and the ruling regime, where the regime depended on the security forces, particularly the police for survival. Thus, the perception among the PNU elite could have been motivated by mutual police-regime survival relationship, while the ODM insistence of the Inspector General was significantly motivated by the party's distaste for the then commissioner of police and the desire to leverage control of the police service against the PNU.²⁷⁷ In the end, the National Police Service Commission (NPSC) insisted on the appointment before the general elections and the Inspector General was subsequently sworn in on December 24, 2012, barely three months to elections.

The tensions witnessed in the implementation of the police reform process were attributed to a number of issues. Though there was little difference in the manifestos of political parties, synchronizing the manifestos within the coalition was identified as one of those challenges the politics of power-sharing posed to the police reform process.²⁷⁸ Whilst both ODM and PNU emphasized police reform in their manifestos, the difference was how this process would proceed both in terms of content and priorities. Finding a common ground on implementation was the problem.²⁷⁹

For others, Kenya's grand-coalition was not well thought out. A respondent observed that 'it was something that was rushed into to ensure that Kenya became a peaceful nation.'²⁸⁰ For this respondent, the single most achievement of the power-sharing agreement was negative peace, implying the cessation of violence. In his opinion, the grand coalition failed to resolve deep-seated issues that caused the violence,

²⁷⁷ Interview with MP2

²⁷⁸ Interview with MP2

²⁷⁹ Interview with MP1

²⁸⁰ Interview with CSO3

and considered it an elite vehicle for perpetuating themselves in power and being in close proximity to power. This is however debatable, for such a discussion fails to offer what could have been a better option for Kenya given the circumstances. Yet for others, there was no power-sharing as one side of the coalition did not have a say on critical issues, including key appointments.

Many times you would see that they would sit, discuss something but when now decision is being taken, you see a partisan decision which only caters for one side of the coalition (sic).²⁸¹

The nature of the debates around Kenya's grand-coalition - its successes and/or failures makes the process of investigating the interactions between politics and police reform process such a daunting task. It presented a number of challenges; first, whilst police reform process was in the public domain, getting the state actors managing the process to comment on the influence of power-sharing politics was difficult. They either dismissed it as having been overtaken by events, or outrightly objected to commenting by virtue of the positions they held.²⁸² Instructively, most of these interviewees were officers whose appointments were controversial and did not wish to escalate the controversies and therefore mainly focused on the positive aspects of the grand-coalition government.²⁸³

On the other hand, members of the civil society groups were at ease and happy to comment on power-sharing politics and police reform process. Their arguments centred on the negative impacts the grand-coalition had on police reform and believed that political interferences witnessed in the implementation of the police reform was an extension of politics of grand-coalition. Since the civil society groups represent people perspectives in the implementation of police reform, they were inclined to talk about political interference.

²⁸¹ Interview with K-Int6

²⁸² Interviews with K-Int2 and K-Int1

²⁸³ See Section 7.3.4 for study lesson this experience has on the research process

Personal interviews with the political elite and general public also demonstrated deep-seated differences amongst Kenyan public. Interviews with political elite linked to the ruling Jubilee Alliance, and this includes those who were previously allied to ODM but defected to Jubilee Alliance, credit former president Kibaki and President Uhuru Kenyatta for implementation of police reform, while those allied to CORD credit Raila Odinga, the former PM for progress in the police reform and blame the Jubilee Alliance for interfering with the reform process. In terms of ethnic affiliations, the overall non-responsiveness of the police reform amongst major ethnic blocs in Kenya remained high at Kikuyu (88.9%), Luo (83.8%), Kalenjin (70.0%), and Luhya (72.7%) amongst others.²⁸⁴ On the whole, public discourse on the politics of grand-coalition and police reform process was influenced by ethnic affiliation and this tended to influence the kind of feedback obtained from our respondents but had very little impact on the overall perceptions about the responsiveness of the reform process.

The above discussions on the interrelationship between grand-coalition politics and police reform show two things. First, power-sharing politics aided in the agenda setting and policy formulation of the post-2007 police reform process. Secondly, power-sharing politics also stood on the way of in the implementation due to deep-seated differences amongst the political elite and threatened to derail the implementation.

5.3 Devolution and Police Reform: The Kenyan Experience

Decentralisation has in the recent past been a dominant theme in many countries in transition after conflict or political crisis. In the last two decades, about 80% of all developing and transition countries have attempted decentralisation (Crawford and Hartmann, 2008). Some existing corpus of decentralisation literature (Dickovick, 2014, Ongaro, 2006, Crawford and Hartmann, 2008) identify three forms of decentralisation namely; devolution, de-concentration and fiscal decentralisation. For the purpose of this study, the conceptualisation of

²⁸⁴ See Chapter Six.

these forms of decentralisation is drawn from Crawford and Hartmann (2008).

In devolution, power and resources are transferred from the central government to relatively independent sub-national authorities headed by democratically elected representatives. In the case of Kenya, the sub-national authorities are the county governments which are headed by governors. De-concentration on the other hand transfers authority from the central government to representatives of the national government at the sub-national branches of the central states. These are represented by the county commissioners in the context of Kenya. Fiscal decentralisation transfers budgetary authority to de-concentrated officials and/or unelected appointees or to elected politicians (Crawford and Hartmann, 2008).

How did devolution debate evolve in Kenya? The demands for devolution as a form of decentralisation pre-date Kenya's independence. To begin with, the white settlers who feared loss of their property and land under post-independence majoritarian system, advocated for power-dividing institutions that would help to guarantee their interests (Horowitz, 2008). At the same time, the minority ethnic groups in the Kenya African Democratic Union (KADU) which feared Kikuyu and Luo elite majoritarian rule under the Kenya African National Union (KANU) advocated for a federalist 'majimboism' constitution during the pre-independence period 1960-1963.²⁸⁵

Whilst the independence constitution provided for a federal constitution, devolution was never realised in Kenya. KANU turned the federalist goal of majimboism²⁸⁶ into a slur: majimboists were derided as tribalists who opposed the broader goal of nationalism (Anderson, 2005). Between 1963 -1966 parliament undertook amendments that increasingly granted the presidency more powers and broke down checks and balances enshrined in the independence constitution (Gimode, 2007). The amendments

²⁸⁵ For a detailed analysis on the roots of Majimbo debate in Kenya see; (D. M. Anderson, 2005)

²⁸⁶ Majimbo (Swahili word for, "regions") refers to political devolution of power to the different regions in Kenya.

replaced devolution of powers by a highly centralised administration, modified the parliamentary system by a presidential system with enormous powers on one person. What followed in Kenya's governance structure was a highly centralised national government system spanning nearly five decades.

Centralisation of power therefore meant that whoever controlled politics at the national level had immense control of security and other state agencies at the regional and local levels. Jomo Kenyatta and Moi regimes thrived on these structures for state survival. A former political detainee interviewed noted;

‘During the era of Moi, the civil service and the police that was supposed to work for the people, the entire civil service was supporting Moi. The PC (Provincial Commissioner), the DC (District Commissioner) and even the DO (District Officer), these are people who had a lot of power during that particular time. The police and all the provincial administration were supporting Moi (sic)’.²⁸⁷

Though devolution and police reform were ‘high on the agenda’ during president Kibaki’s election in 2002, the hopes were short-lived as the political elite around Kibaki frustrated constitutional reform process that was to usher devolution. There was never complete break with the past which it was hoped would be achieved under Kibaki’s leadership. The hopes were however rekindled with the formation of a power-sharing government after the tragic 2007 elections. Were things done differently after the 2007 general elections? This is the subject of the next sub-sections. The discussions focus on the politics of devolution and police reform after the 2007 post-election violence at the national and the county levels respectively.

²⁸⁷ Interview with CSO3.

5.3.1. National Politics of Devolution and the Post 2007 Police Reform Process

This sub-section focuses on the linkage between the national politics of devolution and police reform process in the post-2007 context. Thus, to what extent was the devolution agenda and police reform at the national level interlinked after the year 2007? We locate the ensuing debates within three phases of elite behaviour. These include: the period before the promulgation of the constitution (2008-2010); the period after the promulgation of the constitution (2010-2013) and the period after the 2013 general elections (2013 and beyond). The three phases impacted on devolution and police reform process disproportionately as discussed below.

5.3.1.1. The Period before the Promulgation of the New Constitution

The grand-coalition government of 2008 introduced new political dynamics in Kenya. It provided hope that devolution and police reform processes that had been elusive for many years would be undertaken. The parties that opposed each other, ODM and PNU, in the 2007 deeply contested elections pulled together to support revision of the constitution in 2010 referendum which would later be the fulcrum point for both devolution and the police reform process. As a priority, the coalition parliament quickly enacted the Kenya Constitutional Review Act in November 2008 which gave rise to establishment of the Committee of Experts (CoE) on the Constitutional Review with the purpose of finalising the constitutional review process. The CoE released its first draft to the public for debate on November 17, 2009.

Whilst the two processes, police reform and devolution, were equally significant in addressing the structural causes to Kenya's post-election violence, police reform was prioritised as opposed to devolution in the immediate post-signing of the 2008 power-sharing agreement. This prioritisation was due to two factors. First, the police culpability in the

post-election violence of 2007 (Waki Commission, 2008) meant that police reform needed immediate attention. Thus, the formation of the Ransley Committee was to identify the reform priorities for police reform in 2009 while devolution process had to wait until the promulgation of the new constitution.

Secondly, implementation of devolution often involves constitutional re-engineering. Review of devolution structure, for example as in the case of Nigeria, is often associated with constitutional amendments (Horowitz, 1999). The case of Kenya was no exception and concluding the constitutional review process became a prerequisite towards effective devolution in Kenya. Thus, the debate on devolution got traction towards the end of the year 2010 as interest on the form Kenya's devolution became dominant. This therefore meant that during this period, police reform was core at the formative stages while the politics of devolution was peripheral. Police reform was high on agenda in the immediate post-election violence due to the adverse mention in Waki Commission (2008). This however changed just before the promulgation of the KCLR (2010) constitution with devolution becoming more dominant as opposed to police reform debate. The debates on the two processes however remained divorced from each other at the formative stages.

Though the police reform process at the national level started almost immediately after the signing of the National Accord, devolution seemed to be gradually forming part of the power-games amongst the coalition partners with respect to implementation of police reform process towards 2010. Control of the police reform process amongst the coalition partners already discussed in Section 5.2 seemed to find convergence with the politics of devolution, this time round in terms of the governance structure upon which devolution would be implemented. The emergence of devolution debate seemed to overshadow commitment to police reform implementation after the CoE released its first draft constitution to the public for discussion. Political focus shifted to devolution with little attention to the implementation process of the police reform. This slowed down, albeit temporarily, the implementation of police reform.

Three categories of the political elite emerged with respect to devolution in the proposed new constitution during the period. The first category of the political elite, what we refer here to as 'Raila diehards', involved those who were very passionate about devolution and mainly involved the ODM wing of the coalition government.

The second category involved those who were unsure of what impacts devolution would have on their positions of power at the national level and often adopted a 'wait-and-see' approach. This category of the political elite depended on president Kibaki to provide political direction and did not wish to antagonise Kibaki in the power-sharing arrangement. Vice President Kalonzo Musyoka was perceived to be the face of this category, and in fact, earned the nickname 'water-melon' - green on the outside and red in the inside.²⁸⁸ Notably, this category of political elite was invited to join PNU to neutralise the ODM numbers in parliament and bolster PNU strength after the 2007 general elections.

Finally, there was a caucus of Kibaki's strong allies, revolving around 'Mount Kenya Mafia' whose political choices were perceived to hold sway on the country's politics and were believed to have the ears of Kibaki. Kibaki characteristically remained non-committal and kept the public guessing whether he supported devolution or not. Yet, Kibaki's position would significantly determine the direction devolution took. The political posturing adopted by Kibaki's men and Kibaki himself had an impact on public perceptions towards the government's commitment to devolution and police reform. Those who held sway to Kibaki's political choices formed the bulwark of the political elite in control of the security sector and their buy-in for devolution and police reform was significant yet they were perceived to oppose the processes.

One such politician singled out for his opposition for devolution in one of the interviews was John Michuki, a one-time Minister for Internal Security

²⁸⁸ The symbols for the referendum were colours: green for "Yes" and red for "No. Describing Kalonzo as water-melon suggested that he half-heartedly supported the constitution.

and Provincial Administration and one of the strongest allies of Kibaki.²⁸⁹ Michuki vehemently opposed the discourse of decentralisation of power in the proposed new constitution. While addressing a church gathering in his constituency, Michuki, in the company of Kalonzo Musyoka, the Vice President, argued that the draft was not locally-owned claiming the Committee of Experts (CoE) sought to institutionalise Western liberalism that may not work in Kenya. Michuki dismissed the CoE as puppets of the West, particularly USA and Britain, whose intention was to please their masters by drafting a constitution with two centres of power (NTV, 2010).

Michuki's stand on the proposed constitution may have been influenced by his professional and political background. He enjoyed the trappings of power as a district officer under the colonial regime and as Internal Security Minister under Kibaki. Michuki was mentioned adversely in a number of scandalous activities involving the Police. He was accused of sanctioning the police raid on the East African Standard, shutting down the KTN TV station, and also supporting and condoning the illegal activities of the Artur Brothers (Osewe, 2010).²⁹⁰ As a District Officer, Michuki was the face of the colonial government at the local levels and exercised immense power as was with the Kenyan Provincial Administration in pre-independence and post-independence Kenya, and as Minister for Internal Security presided over a police force accused of human rights violations.²⁹¹ Any form of devolution was therefore an attempt to dis-empower Michuki and many other elites close to Kibaki. In Michuki's opinion, the clamour for new constitution was to remove Moi from power and there was no need for further agitation now that one of their own was in power.²⁹² Clearly, Michuki's arguments represented the fears within Kibaki's inner-circle of losing grip onto power through devolution and police reform process.

²⁸⁹ Interview with K-Int6

²⁹⁰ In March 2006 two men, Artur Sargsyan and Artur Margaryan, the Artur Brothers, as they were popularly known, were allegedly brought into Kenya under the protection of senior state officials. They were accorded state privileges including one being bestowed the title of assistant Commissioner of Police.

²⁹¹ For Human rights abuses by the police under Michuki, see; Alston (2010)

²⁹² Interview with K-Int6

Despite the fears within Kibaki's inner circle, devolution remained a key agenda in the plebiscite campaigns for the new constitution. Grand coalition politics was organised around ethnic interests that focused on reducing tensions amongst various groups in Kenya. Proponents of the constitution change hailed the provisions of the devolved system in the constitution as a guarantee that would ensure resources and power are decentralised closer to the communities while the public mood supported devolution and police reforms processes.

Kibaki declared his support for the new constitution during the opening of the Agricultural Society of Kenya show in Eldoret on March 11, 2010 (Citizen TV, 2010). The announcement in Eldoret was symbolic as it was the political hotbed of the region that had voted against Kibaki in the 2007 general elections and remained one of the regions advocating for devolution. This support opened a new chapter in the drive towards devolution. The Kikuyu elite who had been hesitant joined Kibaki in drumming up support for the constitution. In fact, in July 2010 while in Murang'a, John Michuki declared he had been friends with Kibaki for fifty years and therefore had no choice but to support the draft.

Though the announcement of Kibaki's support for the constitution in Eldoret was symbolic, it may have been intended to counter Raila's preponderance in devolution and police reform debate. The choice of Eldoret venue may have been to prop up William Ruto, who had started fomenting trouble in ODM from within and was cosy with Kibaki. William Ruto-led faction contradicted ODM party demands in the coalition government and often sided with PNU. Coincidentally, Ruto mobilised the Rift Valley region to oppose the constitution. The constitution was subjected to a referendum on August 4, 2010 and subsequently passed with a 67% majority and promulgated on August 27, 2010. The promulgated constitution established two levels of governance; the

national and 47 county governments (GoK, 2010). It also provided for the institutionalization of the police reform process.²⁹³

The above discussion echoes three characteristics of power-sharing dynamics at play within the Kenyan context. First after the power-sharing agreement, the immediate priority of the PNU was to maintain power. The party was never in a hurry to implement devolution and undertake security sector reform as it would amount to losing grip on political power. Michuki's attitude epitomizes this character of dominant parties in the ruling coalition within a power-sharing arrangement. On the flip side, ODM was keen on getting a share of political power, endearing itself as the champion of devolution, as it geared up for possible total control after the lifetime of the power-sharing arrangement.²⁹⁴

Secondly, the compromises that led to a presidential system but with devolved system demonstrate the behavior of the political elite. While ODM had consistently vouched for a parliamentary system, their change of tune to a presidential system could have been influenced by post-coalition government politics. Thus, this brings to question whether the quest for a devolved structure was temporal to the party that felt did not have a fair share of the national cake. Though the party was facing internal wrangles precipitated by the ambitions of William Ruto, there was still hope it could capture power after 2013 election with the promise to implement the devolved system which resonated well with the Kenyan polity.

Thirdly, Ruto's fall-out with ODM was a case of an ambitious politician trying to outflank other politicians in ODM. Under such circumstance, maintaining pressure on PNU to fast-track police reform and devolution got a set-back. ODM focused on in-house keeping rather than forging a common front to push for devolution and reforms the party so fervently fought for. Ruto felt Raila was playing power games with the politics of devolution and in a thinly veiled attack on Raila during Kibaki's meeting at

²⁹³ See Chapter 3

²⁹⁴ Interview with MP1

the Eldoret ASK Show said there was no time for empty political rhetoric and political power games (Citizen TV, 2010).

The linkage between the politics of devolution and police reform process during the period 2008-2010, appears very thin. Devolution had not taken root, while the police reform had started with the establishment of the Ransley committee. Police reform was affected more by the politics of the grand coalition that revolved around control of the state instruments of power and by extension control of the police reform process. In both, resistance and power games involving the coalition partners suggested elite obsession with power, either in the form of retaining it or acquiring it altogether. However, the entrenchment of the processes in the constitution provided compulsion towards undertaking the processes.

5.3.1.2. The Period after the Promulgation of the Constitution (2010-2013)

After the promulgation of the new constitution in August 2010, the politics of devolution within the coalition subsided in the immediate post promulgation period. Focus at the national level shifted onto police reform process which had started immediately after the 2007 post-election violence, but had slowed down due to heightened politics of devolution just before the constitution was promulgated. The political pressures of devolution eased to allow for the processes that gave realisation to devolution to emerge.

Meanwhile, the national politics of police reform took two forms. At the macro level, the parties to the coalition jostled for control of police reform process at the national level. The politics of control, specifically relating to the grand coalition discussed in section 5.2 took centre stage. Secondly at institutional level, the police reform institutions, particularly the National Police Service, the National Police Service and the Independent Oversight Authority, which had barely settled were engaged in supremacy battles due to what police sources called overlapping mandate. These

struggles were however a reflection of the wider political differences in the coalition.²⁹⁵

The perception amongst the top police chiefs was that the NPSC was usurping the role of the National Police Service with reference to transfers, thus making it impossible to respond to security challenges,²⁹⁶ while the latter maintained that it was within its remit to play supervisory and oversight role of the National Police Service. For this reason, an observer termed Inspector General David Kimaiyo as the ‘the biggest threat to police reform’ (Dolan, 2013). A key informant downplayed these differences as part of the teething problems in institutionalising police reforms, though suggested that the Inspector General, as the head of the NPS did not wish to be accountable to civilian authority as envisaged in the constitution and had allowed the political elite to interfere with the police reform process.²⁹⁷

Whilst allegations against the Inspector General could not be verified, most respondents considered the office of the Inspector General to be incompetent²⁹⁸ and the most politicised of all institutions.²⁹⁹ The overlaps in mandates of both the NPSC and NPS may have been genuine and needed clarification. However, the perceived political posturing of the office of the Inspector General fed into the public mood that indeed the Inspector General was opposed to civilian oversight of the police service. In the end, parliament, despite resistance from opposition and civil society groups, had to intervene and clarify these roles through the amendments to the police acts in June 2014.

The latter part of the period saw devolution attract lots of attention. The Republic of Kenya Constitution 2010 had redistributed some powers from national to the county level and gave the counties a stronger basis for exercising their new powers. Given Kenya’s history in which programmes

²⁹⁵ Interview with K-Int3

²⁹⁶ Interview with K-Int3

²⁹⁷ Interview with K-Int1

²⁹⁸ Interview with K-Int2

²⁹⁹ Interview with CSO7

not entrenched in the constitution have ended up being abandoned,³⁰⁰ the promulgation of the 2010 constitution was a turning point for both police reform process and the implementation of devolution. Chapters 14 and 11 respectively of the constitution entrenched these processes in the constitution, effectively shielding them from political interference. Former president Moi used the IPPG process to ward-off domestic and international pressure for reforms in the 1990's, while GJLOs under president Kibaki collapsed due to lack of political-will to pursue reforms within the justice sector (Manby, 2008). There were no statutes upon which these processes were anchored hence were conducted at the whims of the political elite. According to a member of the Parliamentary Select Committee on National Security, the drafters had in mind the recommendations relating to strong foundation for police reform and thus entrenched police reform in the constitution.³⁰¹

Whilst the actual implementation of devolution did not begin immediately after the new constitution was promulgated, this phase marked the process of preparation for the new government structure whose implementation would begin after the 2013 elections. Institutionalising devolution through policy and legislative processes started in October 2010, when the Deputy Prime Minister and Minister for Local Government appointed a Task Force on Devolved Government (TFDG) to advise the government on Devolution. The taskforce chaired by Professor Mutaha Kangu submitted its report, the Report on Implementation of Devolved Government of Kenya, in September 2011. The report spelt out various policies, legislative and administrative measures that the government needed to implement for effective operationalisation of the devolved governments as envisaged in the constitution.

In total there were eleven bills relating to devolution (ICPC, 2014) that were to provide the basis upon which devolution would work in Kenya.³⁰²

³⁰⁰ Some of these reform processes include GJLOs under Kibaki and the IPPG process under MOI. See Section 3.6.2.

³⁰¹ Interview with MP2

³⁰² These included; The County Government Act No17 of 2012; The Public Finance Management Act, 2012, The County Governments Public Finance Management

The first step towards devolution however became effective in March 2012 when the president accented the Transition to Devolved Government Act, 2012 (No. 1 of 2012). This was later followed by the establishment of the Transitional Authority in June 2012 to co-ordinate the transition process.

There were renewed tensions in the coalition in the implementation of devolution. In May 2012, president Kibaki unilaterally appointed 47 County Commissioners to head the newly established county units. Raila opposed the move, claiming he was not consulted with many stakeholders including civil society groups and parliament faulting the president. The Commission on Implementation of the Constitution also voiced concern noting that this was tantamount to retaining the Provincial Administration to run parallel to the structures under county governments (Kimaru, 2014). Kibaki's decision on devolution had an impact on the police reform process particularly with respect to the administration police which was directly linked to the former provincial administration. How would the administration police be delinked from the reformed administration? The police reform sought to merge the administration police and the regular police under the command of the Inspector General. This failed to happen. The administration police remained under the control of their respective county commissioners. Kibaki's appointments created a situation where the administration police remained divided between being answerable to the county commissioners or to the Inspector General as envisaged in the constitution.

Reasons for public furore over Kibaki's appointments were varied; from not having any legal basis and being unconstitutional as they did not reflect the gender and ethnic diversity of Kenya. The appointments were petitioned in Court by the Centre for Rights Education and Awareness (CREAW) which sought the constitutionality of the appointments. The

Transition Act No.8 of 2013, The Transition to Devolved Government Act, 2012;The Urban Areas and Cities Act No.13 of 2011;The Intergovernmental Relations Act No.2 of 2012; The Basic Education No.14 of 2013,The Transition County Allocation of Revenue Act No.6 of 2013, The Transition County Appropriation Act No.6 of 2013, The Public Finance Management Act Amendment Bill 2014,The County Industrial Development Bill, 2013.

High Court overturned the appointments but the Office of the President urged the officers to remain in office. The Court of Appeal put aside the High Court ruling effectively confirming Kibaki's appointments on June 14, 2013.

The narrative from many interviewees was that the political struggles in the implementation of the constitution, particularly devolution and police reform would significantly determine the outcome of the 2013 election after the lifespan of the power-sharing arrangement. This thinking found confluence with many other sources. For example, WikiLeaks cables (Ranneberger, 2009) reported that Raila Odinga hoped he could use devolution debate to propel him to 2013 election victory by using his traditional community alliances of the Luo, Luhya, Kalenjin, Coast and Muslim communities disregarding the fact that the unity of purpose in ODM had broken down due to power struggles within the party.

Odinga underestimated PNU political strategy going by the political alliances that emerged ahead of the 2013 general elections. PNU mutated into Jubilee Alliance, what Lynch (2014) refers to as 'the alliance of the accused', while ODM mutated into Coalition for Reforms and Democracy (CORD). Though devolution would still form a key plank of Odinga's campaign, the new alliances neutralised the effectiveness of devolution as a campaign platform. Reconciliation between the communities, particularly Kalenjin and the Kikuyu, which fought in the 2007 elections, generation gap and a vote against the International Criminal Court process, emerged as critical issues in the campaign process.³⁰³

Both the Jubilee Alliance and CORD were determined to demonstrate commitment to devolution and police reform agenda. The combination of the political elites in both camps made it difficult to single out strictly which side was best suited to implement devolution and police reforms agenda. Uhuru Kenyatta formed the Jubilee Alliance with William Ruto, while Raila

³⁰³ For the politics of 2013 general elections, see; Cheeseman, Lynch, & Willis (2014); Mueller (2014)

Odinga formed CORD Coalition with Kalonzo Musyoka. In both cases, the two coalitions had running-mates who either rejected or half-heartedly supported the draft constitution respectively. The Jubilee Alliance won the elections, but the perception that it was not committed devolution and police reform persisted. This perception became one of the greatest challenges to Jubilee administration after the first year in office.

5.3.1.3. The Period after the Elections (2013 and Beyond)

After the 2013 national elections, the power-sharing between PNU and ODM ended. The Jubilee Alliance of Uhuru Kenyatta and William Ruto assumed the country's leadership, while CORD of Raila Odinga and Kalonzo Musyoka's took the opposition benches. Devolution become a central issue as it was the first time political decentralisation was being implemented and more still, by the new administration. Meanwhile, police reform debates became peripheral as much attention was on devolution.

CORD continued with its onslaught that the Jubilee Alliance was opposed to devolution. The narrative was fanned by the fact that the new administration faced myriad transitional challenges in the implementation of devolution. Whilst it was expected that transition to a devolved system would pose challenges, and this is not unique to Kenya, the jubilee administration handling of these challenges gave opposition the arsenal to label the government as anti-devolution, leading to tensions amongst the political elite. The government did not communicate effectively the challenges to the public, but focused on countering the political score against CORD thus giving the latter an opportunity to keep government on the defensive.

Actualisation of the devolved functions remained controversial with the two levels, national and county, governments engaged in political competition. The Council of Governors accused the Transitional Authority of delaying of transfer of functions to the counties. These delays created tensions between the national and the county governments which led the governors to support the disbandment of the Authority on account of

incompetence. The transfer of functions was however gazetted by the Transitional Authority in August 2013.³⁰⁴ This transfer opened another feuding chapter between the national and the county governments over funding of the expanded county roles. There were delays in releasing of funds to support these expanded functions and the resources were equally very limited thus feeding to calls for increase of funding to the county governments from the 15% to 45% of government revenue through a referendum.

Yet another area of tension between the national and county governments was in the management of security function including policing. It was not clear how the system worked especially when many counties complained of insecurity. The constitution created a system which made it difficult to manage security at the county level at three fronts. First, it attracted sabotage by the county governments to demonstrate that the national government was incompetent in the delivery of security (Orina-Nyamwamu, 2010). The insecurity in some counties namely; Mandera, Tana River, Mombasa, Marsabit and Lamu inter alia pointed towards sabotage.³⁰⁵ In fact, Lamu governor, Issa Timamy was arrested over Mpeketoni attacks in Lamu in June 2014 but was later released since the state did not prefer charges against him. Secondly, it isolated the public from participating in the provision of security at the county level. The establishment of the county policing authorities was delayed due to unwillingness of the national government to 'surrender' part of security function to the counties for a number of reasons.

Firstly, the national government did not prioritise police reform at the county level, but was keen on strengthening the old provincial

³⁰⁴ The national government retained the responsibility for roads and electricity projects, early childhood education, supply of drugs other medical commodities and building of diesel power station. The county governments got the tasks of agriculture, county health services, control of air, noise pollution and public nuisance county transport, trade and development regulation, village polytechnics government policies on natural resources and environmental conservation and county public works.

³⁰⁵ For the purpose of illustrating this relationship, See the situation in Marsabit county discussed in Section 5.3.2

administration structures, which had been a key plank in the constitutional reform debate.³⁰⁶ According to Ghai (2008), the disbandment of the provincial administration had dominated the constitutional review conference at Bomas of Kenya. However, there seemed to be unwillingness within government to implement this break with the past. Secondly, Kibaki and Uhuru continued to frame devolution and policing structures along the old provincial administration structure. Thirdly, it created a contradiction by maintaining policing as a national government function while at the same time providing for citizen participation through the County Policing Authorities.

Problems of aligning the police functions with devolved county-level units during the period under consideration started when in June 2013, the Inspector General unilaterally appointed the County Police Commanders. At the time, no structures existed in the police command for the County Police Commanders and the IGs decision led to tensions with the NPSC.³⁰⁷ The appointments created confusions as there were two officers of the rank of Senior Superintendent of Police (SSP) within the counties thereby creating two centres of power in the delivery of service at the county level. Interviews with police officers in Kisumu revealed that this affected police accountability as there were no clear guidelines on who was senior.³⁰⁸

Like his predecessor, the new President Uhuru Kenyatta delegated national government functions to the county commissioners in May 2014. He launched a new structure known as National Government Administration Officers to be in charge of national government functions at the county level (Kimaru, 2014). This was in line with the National Government Coordination Act 2013 which provided for the restructuring of the provincial administration. Given that the Court of Appeal had put aside the High Court ruling declaring President Kibaki's appointment of county

³⁰⁶ Interview with CSO2

³⁰⁷ See Section 4.3

³⁰⁸ Interviews with NPS2 and NPS3

commissioners as illegal, there was now legal basis for appointment of the county commissioners.³⁰⁹

The opposition interpreted Uhuru's move as a ploy to rebrand the former provincial administration and a further consolidation of central government power away from the elected governors in the counties. The government was undertaking deconcentration alongside devolution. No governor attended the ceremony despite receiving invitations; further confirming fears earlier expressed when Kibaki unilaterally appointed the county commissioners. The former provincial commissioners were redeployed as regional coordinators in charge of clusters of counties similar to what existed under the former provincial administration. Police structure also took the same format with the former provincial police officers becoming regional police coordinators.

The governors argued this move was meant to undermine the role of the County Policing Authorities. Central to their argument was that the directive by the president to maintain the status quo with the county commissioners chairing the security committee and making the county police chiefs answerable to the county commissioners was inconsistent with the Article 243 of the constitution. Whilst the governors and CORD opposed the presidential order, the Commission of Implementation of the Constitution (CIC) maintained the president had the powers to transform the provincial administration into a system adapted to devolution. This was a sharp contrast to CIC position when Kibaki appointed the County Commissioners. CIC had previously vehemently opposed Kibaki's appointment of the County Commissioners and declared them unconstitutional.

The disquiet amongst the governors about the deconcentration of the national government to the county level through appointment of the county commissioners prompted the cabinet secretary to meet the governors. The meeting resolved that the county policing authorities, chaired by the governor as per the constitution would work with the county

³⁰⁹ See Section 5.2

security committees, which are chaired by county commissioners. Though this was expected to be fast-tracked, the guidelines were gazetted in September 26, 2014 with the governors' role in security management being peripheral.

In July 2014, the Cabinet Secretary in charge of Devolution, the CIC and the Governors' Council had proposed an amendment to repeal the Transition to Devolved Government Act 2012 and replace it with Inter-Governmental Relations Act that would see the Inter-Governmental Relations Committee take over from the Transitional Authority. Governors and Members of County Assemblies (MCAs) supported this initiative. However, both Senate and the National Assembly opposed this move arguing that it was the means by which the executive wanted to control the counties. The bill was defeated in the National Assembly thus giving the Transitional Authority a lifeline.

The period after the 2013 elections was the most active in terms of the politics of devolution. The politics was attributed to the fact that devolution was a new phenomenon that had never been tried in Kenya. Thus, the process was characterised by lots of bargaining for power. On the one hand, the opposition saw this as an opportunity to remain relevant with 2017 general elections in sight. Raila's return from a three month tour in the US in May 2014 opened up active politics of devolution and security sector reform, including police reform, debate. The period also witnessed security failure in the country due to the threat posed by Somalia's Al Shabaab militia incursions into Kenya. Raila demanded for national dialogue on matters devolution and security and gave a one month window of opportunity to the government to dialogue or face unspecified consequences. The Jubilee Alliance rejected calls for dialogue.

Thus on Saba-Saba³¹⁰ the July 7, 2014 declaration by CORD for 'Okoa Kenya' (Kiswahili for Salvage Kenya) referendum was to be a game changer in the politics of devolution and security. The initiative sought to

³¹⁰ "Saba-Saba" (Kiswahili for 7/7), is symbolic of the day when opponents of former President Daniel Moi launched the campaign to open up political space in Kenya in the year 1990.

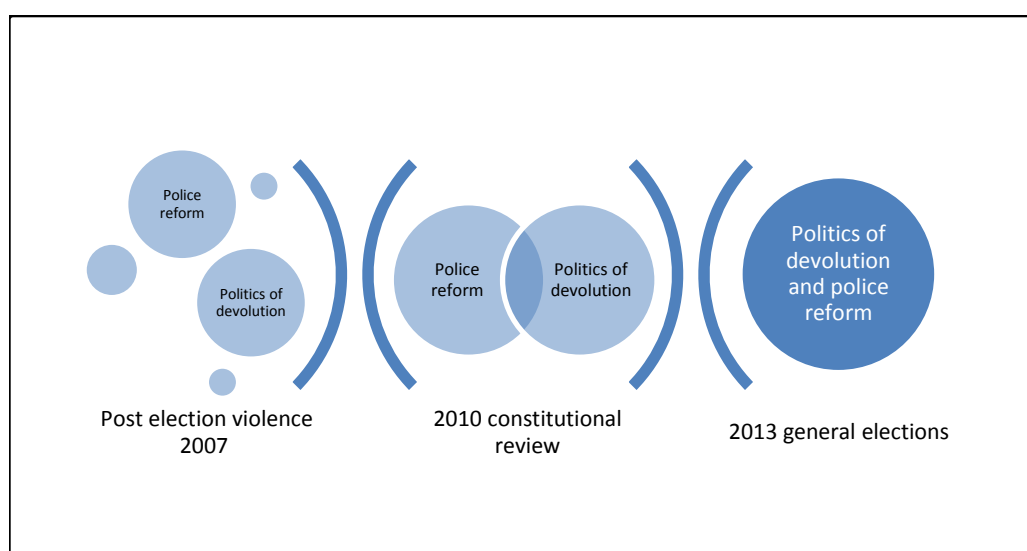
fix the allocation of revenue to County governments to a minimum of 45%, strengthening of the Senate and involvement of the county governments in the management of security at the local level. The council of governors also pushed similar agenda under the banner 'Pesa Mashinani' (resources to the grassroots) initiative.

The debates and political struggles over devolution in the post 2013 elections had major impacts on the police reform process. The police reform process was thrown into the peripheries as the focus was on redistribution of resources to the counties. While the police reform process lagged behind due to inadequate resources, the government, in an attempt to ward off pressure showed willingness to avail resources to the members of county assemblies (MCAs) to scuttle the referendum. The government offered the MCAs benefits including car grants, construction of ward offices amongst other goodies to have the MCAs scuttle CORD and Governors referendum. These however remained promises as there were no guidelines on how these were to be implemented.

The analysis of the linkage between devolution and police reform process at the national level across the three phases discussed above does suggest a definite pattern. The course of devolution and police reform was largely determined by the macro political developments in the country. These included the tragic events of the post-election violence of 2007, the 2010 promulgation of the new constitution and finally the post power-sharing elections of 2013. In the first phase, police reform formed the core of national debate at the formative stages of the period. This however changed towards the end of the period when the debates about devolution picked up in anticipation of the 2010 constitution. The two processes however remained peripheral to each other. In the second phase, devolution politics subsided as the political elites allowed for the setting up of the devolution framework. Focus shifted onto police reform process as coalition partners fought over control of police reform process. There was confluence of the two processes due to the perceived significance of the two processes in control of power at both national and county levels. Finally, the post-2013 election period was characterised by

lots of emphasis on devolution. This was however more complicated as it also involved locating police reform process, which was largely a national agenda, within the devolved system. This relationship is represented in Figure 5 below.

Figure 5: Linkage between post 2008 police reform and devolution



Source: Author 2015

5.3.2. Police Reform at the Counties

Having examined the national power-sharing and devolution that took place in Kenya after 2008, we now focus on how these filtered into police institutions and reform processes in the counties. How did the national politics of power-sharing and devolution filter into the police institution and the overall police reform process at the county level? While political power distribution at the national level was through an internationally mediated power-sharing arrangement, distribution of political power at the county level was through local elite political settlements.³¹¹ These settlements were in the form of informal agreements governing the distribution of goods, rights and responsibilities within the county level

³¹¹ Political settlements in this context refer to the balance or distribution of power between contending social groups and social classes, on which any state is based. See; Globalr2p (2013); Khan (2010)

Similarly, while the police reform process was a nationally driven agenda from the top, reform at the counties was limited and took different trajectories and was significantly influenced by the balance of power at the local level. There was very little police reform visible in many counties thus suggesting that the police reform process had not trickled down to the counties.³¹² Though there were mixed reactions in terms of visibility of the reform process at the counties, the general thread was that indeed there was fair awareness of the reform process at the national level but these were insignificant if not invisible at the county level. For example, in one of the focus group discussions with women in Kisumu, a participant pointed out that ‘we hear there are reforms but these reforms have not reached down to us wananchi (citizens). We just hear it in the media (sic).’³¹³

Some counties supported the national police reform agenda. Counties for example Mombasa, Machakos, Uasin Gishu and Nyeri, inter alia, provided support in the form of vehicles to the local police to facilitate their operations. The support to the police reform process from the county governments for police reform largely depended on the relationships between the county governments and the national government and the dispositions of the respective governors. Mombasa and Machakos for example were probably the very first counties to acquire vehicles for police operations in the country. Whilst Machakos continued to enjoy cordial relationship with the national government, the county government of Mombasa fell out with the local police and the national government over heightened insecurity and referendum debate respectively and thus the county authorities threatened to withdraw support for the police.

However, other counties for example Mandera, Turkana and Kisumu considered policing and security a function of the national government and therefore did little if nothing to support the police reform process. Kisumu for example did not even have any budgetary allocation for policing and security. At the time of data collection, that is August 2013,

³¹² This debate is developed further in Chapter 6

³¹³ FGD2

this county government was considering transferring funds from other sources to the security vote as an afterthought.³¹⁴ Six months after data collection, there was no evidence that Kisumu County was supporting the police. Kisumu Deputy Governor was quoted, “How then are we to provide fuel and other needs to a department that is not under us? (sic).”³¹⁵ Two explanations can be attributed to this state of affairs. First, the nature of national politics influenced support for police reform at the county level. Most of those counties in support of the process were elected on the Jubilee platform, while most of those that did not support police reform were affiliated to CORD. Secondly, county governments were a new phenomenon in Kenya and therefore lacked technical expertise in many areas. Therefore, many counties had not envisaged the need to include security component in their budgeting since security and policing were national functions.

Though devolution was to give leverage to regions that had been traditionally marginalised, especially those from northern Kenya, there was still a sense of exclusion even after devolved system came into existence. In the aftermath of double Al –Shabaab attack in Mandera County that killed 64 Kenyans, on a Nairobi bound bus on 22/11/2014 and Koromeh quarry attack on 2/12/14 respectively; Mandera Senator Billow Kerrow disclosed that the region was still excluded going by the number of officers deployed in conflict areas, response to intelligence reports and facilitation of security agencies. For example, he argued that the national government allocates Mandera County only Ksh 57, 000 (about £400) for fuel in three months.³¹⁶ Whilst we could not verify this claim, the impression is that areas that have traditionally been marginalised in Kenya still miss out in improved funding for the police.

Overall, there is little evidence of structured involvement of the county governments in the police reform process. If anything, the overall police reform process did not consider how the political process at the county

³¹⁴ Interview with CSO3

³¹⁵ See; Nation Correspondent (2014)

³¹⁶ See; Obala (2014)

level would affect the police reform process within the devolved units. There was lack of technical expertise at the counties to translate the national police reform agenda to fit into the local security and policing priorities in the counties. Interview with police officers in Nairobi and Kisumu revealed that they had not been trained on police reform. In fact, most police officers largely perceive police reform to be about improvement of police welfare. In Kisumu for example, no effort had been made to train the local police chiefs on the paradigm shift in policing, neither was there deliberate recruitment of experts on police reform process at the county level.³¹⁷

Whilst the politics of devolution remained alive at both the national level and county levels due to demands for more resources to the latter, police reform was enveloped within the wider devolution debate. The opposition CORD and county governments called for transfer of policing functions to the county level. The national government however argued it would be untenable to place policing and security in the hands of local political elite arguing that governors are likely to misuse security officers and instead preferred strengthening of the Provincial Administration.³¹⁸ By far this remains one of the most challenging problems that the 2010 constitution did not expressly resolve-providing for policing as a national function while at the same time providing for citizens participation. It provided an avenue for interpretations depending of political interests.

The gubernatorial elections in 2013 in the devolved units were expected in 2012 to be very competitive throughout the country. This is because the governors would be the chief executive officers of the units and would therefore control huge resources from the national government. Additionally, the governors would chair the County policing authorities, thus providing the governor with immense influence at the county level. The possibility of controlling both resources and security at the county level therefore made the elections competitive. In a study of conflict and politics of Tana Delta, a respondent captured the significance with which

³¹⁷ Interview with OCPD ,Kisumu

³¹⁸ See; Mbaka (2014)

the governors' role was understood; 'The Governor will be the President of the county and can decide what happens with the land' (Kirchner, 2013). The intended introduction of county policing authorities at the county level therefore remained one of the push factors that made the elections competitive at the counties. Thus, prior to the elections, there were lots of activities in the form of alliance-building at the county level in the same way alliances were being built at the national level. The alliances were largely based on ethnic and clan affiliations and involved the local security systems.

In Tana River for example, the alliances revolved around three ethnic communities namely; Pokomo, Orma and Wardei communities. The dominant group, the Pokomo remained more divided on choice of candidates to present for elections. The community presented three candidates, namely; Danson Mungatana (Lower Pokomo), Mandara Badiribu and Adam Dhidha (both from Upper Pokomo) while Orma presented two candidates namely; Hussein Dado and Molu Shamboru. Just as the politics at the national level was a two-horse race between Jubilee and CORD, elections in Tana River reflected this pattern. The minority communities, the Orma and the Wardei through local political settlement formed an alliance to challenge the dominant Pokomo community, and indeed the Pokomo lost (Kirchner, 2013). With the support of Wardei community, Hussein Dado (Orma) garnered 42.4% while Mungatana (Pokomo) got 31.1% of the votes cast (Kirchner, 2013).

The involvement of the security sector and the police featured prominently in the alliance building in Tana River. The Pokomo tribe, the dominant group blamed Yusuf Haji³¹⁹ of siding with Hussain Dado and claimed the two, who had a history working in the government, planned skirmishes using the state security apparatus. By virtue of Haji's position, as Interior Minister, the Pokomo claimed he was using the police to unleash terror, while the Orma also blamed the police of being corrupt for failing to

³¹⁹ Though Yusuf Haji was not a native of Tana River, the Pokomo accused him of supporting the Orma community who would help him secure his livestock in Tana River and also expand his Ijara District into Tana River for his own benefit. See; Kirchner (2013)

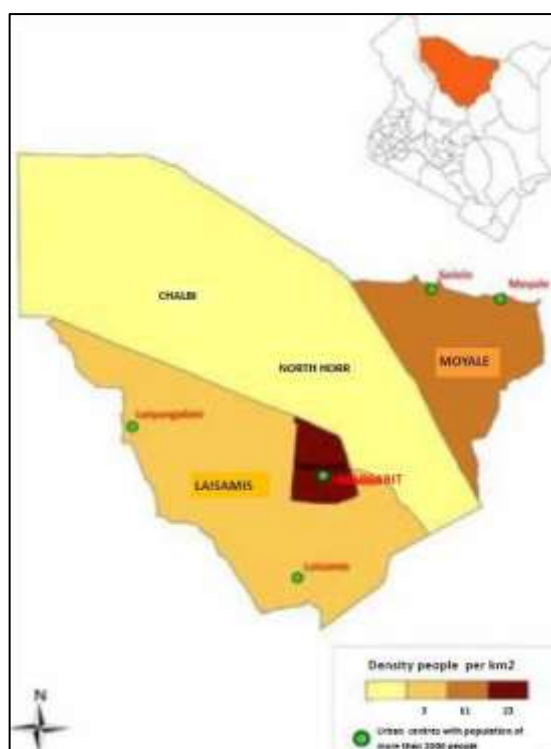
disarm the Pokomo (Kirchner, 2013). The result was fear and despondency amongst the locals resulting in low voter turnout in the 2013 general elections. The police were unable to halt unfolding violence between the ethnic Orma and Pokomo and lost confidence amongst the two communities. Undertaking police reform under this context of suspicion became impossible.

The same story was replicated in other counties especially those characterised by deep ethnic cleavages including Mandera, Wajir Garissa and Marsabit amongst others. Significant to these political settlements is the motivation of local network means of violence and economic rewards in reproducing power (Kirchner, 2013). The local security mechanisms including the police became part of this network, as will be shortly examined in the case of Marsabit County, yet the police reform agenda seem not to have factored these dynamics. In order to understand how these local political settlements impacted on devolution and police reform processes, the remaining part of this section now focuses the politics of devolution and police reform process in Marsabit County.

Marsabit County provides a good case for exploring the politics of power-sharing at the county level and its impact on police reform process. It remains one of those areas that violence is normal (Scott-Villiers et al., 2014) despite police reform process in Kenya. Marsabit is located some 200km south of Kenya-Ethiopia border in Kenya's arid north (see Figure 6: Marsabit County map). Its proximity to Ethiopia makes it the commercial hub between Kenya and Ethiopia. The county represents situations of divisions along ethnic and religious cleavages. About 40% of the population are Christians, 32% Muslims and 28% believe in traditional religions and others (Jilaa, 2014).

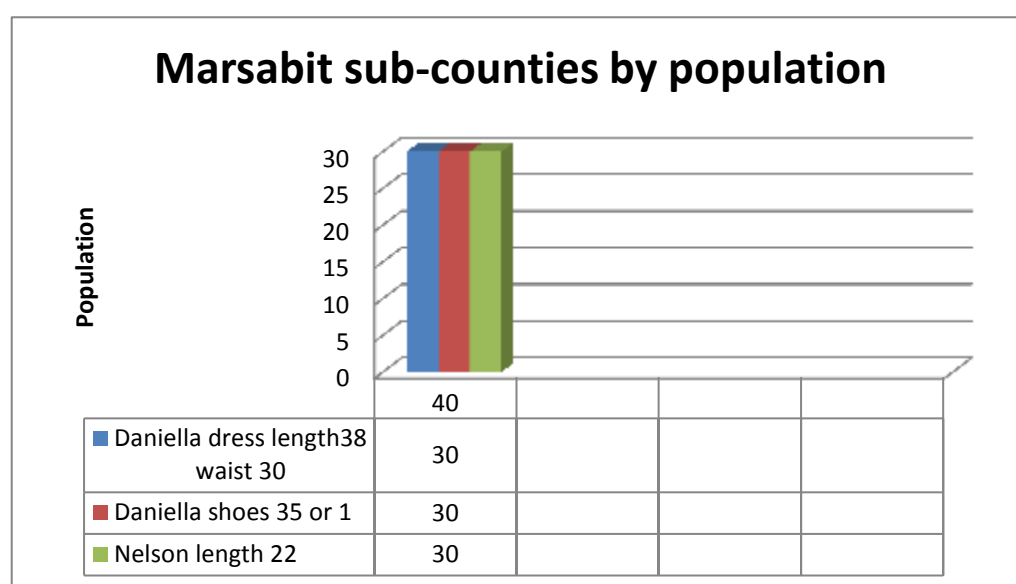
In order to understand the politics of devolution and police reform process, it is important to understand the county's demographics in terms of ethnic grouping as shown on Table 6. Marsabit is divided into four sub-counties. Ethnic groups in the county include; Rendille, Turkana, Gabbra, Burji and the Borana. The Borana are the most dominant group and live in Saku and Moyale which are the economic strongholds of the county.

Figure 1: Marsabit County map



Source: <http://www.kenyampya.com/index.php?county=Marsabit>

Table 6: Marsabit county demographics



Adapted from Marsabit County Government: <http://marsabit.go.ke/population/>

The period preceding the 2013 elections was characterised by ethnic concerns on how to dominate the new political structures with the view to controlling the rents and patronage that would come with decentralisation.

The assumption then was that the dominant group, the Borana would be the major beneficiary of the devolution.

In the run up to the 2013 elections however, the Borana were deeply divided on how to share power in the county amongst the various groups. There were a total of three alliances, two among them dominated by the Borana. For fear of being dominated by the Borana in the new dispensation, the Rendille, Gabbra and Burji reached a political settlement to form an alliance in which key posts, namely; Governor, Senator Deputy Governor, Women representatives, established by the new devolved structures would be shared equitably. They revived REGABU (Rendille, Gabbra, and Burji), an old alliance that had been previously initiated to challenge the Borana dominance in the powerful teachers union, the Kenya National Teachers Union (KNUT) (Scott-Villiers et al., 2014).

Critical to the victory of the camps was Godana Hargura (Rendille) who was the most influential opinion leader (Jilaa, 2014) and whose support would significantly tilt the election outcome. Hargura insisted that he would only team up with the Borana's if they went to the election as a united front through an all-inclusive political settlement. There was no settlement amongst the Borana and Hargura joined REGABU that won the elections.

Whilst all the alliances were initially associated with the Jubilee Alliance at the national level, REGABU decamped to CORD and left the two Borana camps to split the Jubilee Alliance vote. Meanwhile, REGABU was busy consolidating power base and transferring voters en-masse during the registration of voters exercise. REGABU had a head-start and went on to win the elections as seen on Table 7 below. Borana politicians, finding themselves out of power for first time in decades, cried foul (Scott-Villiers et al., 2014).

Table 7: Marsabit County 2013 Election Results

POSITION	NAME	GROUP	VOTES
Governor	Ukur Yattani	Gabra	48,491
Deputy Governor	Mohammed Ali	Burji	
Senator	Godana Hargura	Rendille	54,213
Women Rep	Nasra Ibrahim	Garree	42,906

Source: Adapted from IEBC Marsabit County Election Results

The election results introduced a shift in power dynamics in the county. Though Marsabit has a history of inter-ethnic tensions, the outcome of the elections triggered fresh violence. There was violence from 1994-6 between Burji and Borana, in 1996/7 between Rendille and Borana, and from 2003-8 between Gabra and Borana. In the post 2013 elections, the Borana felt left out in key appointments in the county further heightening tensions that have existed amongst the Borana and the other communities.

Members of the local communities and the police are culpable in the violence. As noted by one of the respondents, ‘the people are not willing to share information or report criminals to the police because they are their kinsmen’ (Scott-Villiers et al., 2014) while the police also take sides and therefore cannot help restore order despite the ongoing police reform process. This led to confidence in the public in police being at its lowest ebb as opined by a respondent;

‘It gets to a point where people no longer go to the police, but instead they take revenge. If the help from the government was reliable, where the killers would be arrested, then the communities would be satisfied and such revenge would not be common’ (Scott-Villiers et al., 2014).

To prevent the conflict from escalating, the Deputy President threatened that the national government would move to suspend Marsabit County if the leadership did not intervene to stop the violence. Article 192 of the Kenya constitution (GoK, 2010) provides for suspension of county governments in the event of emergency out of internal conflicts or any

other exceptional circumstances. With this in mind, some respondents quoted by Scott-Villiers et al. (2014) noted that the Borana preferred to make the county ungovernable, with the intention of reverting Marsabit County to the national government. In the end, parliament approved the deployment of the Kenya Defence Forces (KDF) to help restore peace (The Star, 2013). This deployment did not stop the violence as attacks continued even with the presence of the military.

Failure of the local leaders to dialogue forced the president to summon Marsabit county leaders on February 5, 2014 and urged them to take leadership in restoring peace and threatened to send the military yet again (Scott-Villiers et al., 2014). This is despite the fact that previous military deployment did not lead to cessation of violence. Subsequently, a locally driven peace process took place on 21st – 22nd February 2014 in Nairobi with the support of the national government and facilitated by the Kenya Red Cross. This led to the signing of "The Boma Peace Agreement (The Boma Declaration)" in which local leaders promised to work for, build and "support the peace process to bring lasting peace to Marsabit.

The politics of power-sharing in Marsabit County was not only localised to Marsabit as the politicians at the macro level joined in the fray. The opposition CORD argued that the Jubilee government had objected to the governors chairing the County Security Committee as envisaged in the Constitution and therefore exonerated the Marsabit governor from any wrong doing. The coalition accused the national government of hiding under security to frustrate devolution (Karanja, 2014).

The Marsabit case raises a number of questions about the design of Kenya's police reform process under the devolved system. Whilst the constitution envisaged that the elected representatives would chair the county policing authorities in this case the governor, implementing this in a county that is deeply divided would present yet another challenge of local ownership especially where the local leadership has problems with the governor. It would amount to institutionalised politicisation of security at the county level. This would provide the elected representative with the

means to pursue a personal rather than a people agenda using the instruments of power available at the county level. At the same time, whilst the national government administration has been the custodian of security to the local people, ethnic alliances defied this through the actions of the administrators and the police at the village level. The local chiefs and police were part of the network to frustrate peace efforts.

The political settlement in Marsabit was among the local elites, including political, religious, ethnic and business elites. It however excluded the majoritarian community, the Borana and the national government representatives at the county. The result was a power struggle pitting three actors. REGABU was keen to stamp authority while the Borana sought to undermine this authority. The National government through the County Commissioner also sought to protect the interests of the national government through the old order as captured by a respondent;

‘There is a lot of tension between the county commissioner and the governor over power. It is not clear to many people who, between the governor and commissioner, is in charge of the county. But because the commissioner controls the security apparatus he has more power but he is misusing the security officers’ (Scott-Villiers et al., 2014).

Surprisingly, at the very village levels, the chiefs and their assistants subscribe to their community interests and mobilise against the national government and other warring community as noted - ‘these chiefs and sub-chiefs are the ones used to mobilise people and pass messages to villagers, to block the administration from knowing what is happening and organising the attacks’ (Scott-Villiers et al., 2014).

Political settlements are normally determined by the political organisation in the country. Devolution thus determined the kind of political settlements in Marsabit County. Political settlements may result from compulsion of an authoritarian regime, where local political elites are forced to work together; the outcome of compromises between previously warring

parties; or the result of a more pluralist bargaining arrangements (Globalr2p, 2013).The settlements in Marsabit ahead of the 2013 elections were a result of the pluralist bargaining, while the settlement after the Boma Declaration was forced by the national government, but found favour amongst the previously warring groups.

Thus, the pre-2013 political settlement in Marsabit was not all inclusive, while the post Boma Declaration was inclusive. This echoes the argument that imposed political settlements which involve the warring parties often end up more inclusive than settlements involving pluralist bargaining. The relevance of the challenges of implementing police reform and devolution in Marsabit County demonstrate that institutional reform is not only a technical issue, but one which must consider politics as central to reform debates. Kenya's police reform process seemed to have underestimated the emergence of new political power elite at the county level and how to deal with the challenges these elites would pose to the implementation of police reform process.

5.4 Conclusion

This chapter aimed to analyze the interrelationships between power-sharing politics and police reform process in Kenya. As discussed in the chapter, the power-sharing agreement that took place at the macro level after the 2007 postelection violence had profound effect on the country's governance structure and policing. It triggered mechanisms that led to renewed effort to reform the police and review the constitution that eventually led to the establishment of the county governments.

The chapter has considered the politics of grand-coalition and devolution and their interrelationship with police reform at both the national and county levels. The study reveals that struggle for political power determined the scope and breadth of police reform process. The political elite wielding power before the power-sharing arrangement at the national level ceded ground to facilitate police reform only to the extent that it allowed them to ease-off pressure from both internal and external

stakeholders interested in Kenya's stability. Thus, police reform proceeded depending on the pressure exerted on the political establishment.

The establishment of the county governments became the next frontier of the power-sharing struggle. As argued by Cornell and D'Arcy (2014), the gubernatorial elections led to the entrenchment of existing elites and patronage networks with most of those elected having held public offices before. There was also the emergence of a local powerful political elite that challenged the national elites as demonstrated by the governors' quest for control of more resources and the security function at the county level. These dynamics impacted on police reform process, threatening to scuttle the reform process altogether. They raised questions about whether the design of the police reform agenda discussed in chapter three had envisaged that the politics of power-sharing would impact on the police reform process.

Overall, though quest for power determined the pace of police reform process and implementation of devolution in Kenya, none of the protagonists denounced the need for reform, thus suggesting some level of agreement and future prospects in Kenya's reform process. However, raw power politics seem to be the point of divergence amongst the political elites. Amidst all the politics, to what extent was the police reform process responsive to policing and public security needs? This is the main question that the next chapter addresses..

CHAPTER SIX

RESPONSIVENESS OF POLICE REFORM PROCESS IN KENYA

6.1 Introduction

This chapter assesses the extent to which police reforms in Kenya have resulted in changes related to improved policing and responding to policing and public security needs. Responsiveness here refers to a measure of how the police reform processes address security concerns in a manner consistent with the demands of the population. It is a function of how the citizenry articulates its preferences and the capability of the reforms to meet the demands equitably (Bastian and Hendrickson, 2008).

The chapter therefore examines progress in implementation, as much as impacts, of police reform process in relation to improving people's sense of security, taking into account the context upon which the populations live. The chapter revolves around the efficacy of security sector reform processes to policing and community security needs, which is the third thematic area of this study. Specifically, it responds to the fifth secondary research question thus; to what extent is national police reform process in Kenya responsive to policing and security needs of the Kenyan population?

The chapter is divided into six sections. The present section (Section 6.1) introduces the chapter. Section 6.2 outlines the methodological approach used in analysing data and addressing the questions specific to this chapter. Section 6.3 explores peoples' understanding of security in Kenya; particularly their priorities in terms of security and safety at the community level, level of awareness of police reforms and who they perceive to provide their security. Section 6.4 is an examination of the perceptions of responsiveness of reforms with respect to the four officially stated priority areas of police reform process, namely; Police image, accountability and partnerships; Professionalism, terms and conditions of service; Operational preparedness, tooling and logistical capacity and Institutional, policy and legal reforms. The aim here is to explore how the

national police reform priorities cascaded down to match the priorities of populations at the community level. Section 6.5 focuses on the perceptions towards responsiveness of the overall police reform process. The section is an integrative examination of perceptions towards responsiveness in each of the sub-sections in Section 6.4 and integrates quantitative aspects of our questionnaire in each of the areas. Section 6.6 concludes the chapter with a brief presentation of the key findings of the chapter.

6.2 Approach to Chapter Analysis

The approach to the analysis of this chapter was informed by priority and sequence decisions in combining qualitative and quantitative research in mixed methods (Bryman, 2012). Priority decisions related to how far qualitative or quantitative methods were the principal data gathering tools, while sequence decisions related to which methods - qualitative or quantitative - preceded the other.³²⁰ Bryman's categorisation yields three priority approaches, namely; Quantitative, Qualitative and Equal-weight (both qualitative and quantitative). These in turn yield a total of three sequence combinations each. Though in broad terms Bryman's classification was intended for an entire research project, we adopt his approach in the specific analysis of data available for this chapter. We prioritise qualitative methods since they were the main data collection methods, with quantitative methods being supplementary.

Three possible sequence combinations namely; quan→QUAL, QUAL→quan and QUAL+quan (Bryman, 2012) were possible choices for this chapter.³²¹ While our analysis proceeds with presentation of qualitative interviewing data involving both key informants and focus group discussions followed by quantitative data derived from our questionnaire, thus adopting an overall QUAL→quan approach, we are not constrained by this sequence and let the analysis develop iteratively

³²⁰ For further clarification of priority and sequence decisions, see; (Bryman, 2012, pp., p.632)

³²¹ Capitals and lower case indicate priority; arrows indicate sequence; + indicate concurrent. See; Bryman (2012)

from full range of the data available at our disposal. Thus it would be reasonable to argue that though the analysis assumes a QUAL→quan approach, it also has elements of QUAL+quan where emphasis is on qualitative aspects while also fusing in subsidiary quantitative analysis.

The choice of the approach, which integrates both QUAL-quant approach and QUAL+quan approaches, was for various reasons. First, it provided opportunity to compare and iteratively develop and analyse the range of available data according to requirements rather than be over-constricted by a definitive structure. Secondly, it provided an opportunity to analyse quantitative data in instances where qualitative data was missing and vice versa and also allowed us to integrate our primary quantitative data into the existing national surveys. In short, the approach allowed the analysis to develop iteratively and organically within the broad framework described above.

The analysis of qualitative data draws from three main sources namely; a variety of available secondary sources, qualitative interviewing (key informant and personal interviews) and three focus group discussions (FGDs) (which were conducted in Kisumu). For quantitative data, we used existing surveys as important secondary literature sources and a semi-structured questionnaire as a primary data source. The latter was a, Questionnaire for Members of the Public (QMP)³²² to collect primary quantitative data on public perceptions on responsiveness of police reforms towards policing and public security needs.

A caveat on the use of the questionnaire at this point is however necessary. The primary data derived from the questionnaire was not intended to authoritatively represent the public perceptions of the entire Kenyan population, but meant to triangulate and deepen our understanding of the perceptions derived from qualitative interviewing and other secondary sources including existing surveys. With this in mind, the use of the questionnaire was limited to only eighty-six cases drawn from Kisumu and Nairobi and limited to sixteen Likert-type quantitative items.

³²² See; Appendix IV: Questionnaire for Members of the Public (QMP)

Where reference is made to the Kenyan public, then this is in relation to national surveys derived from other secondary sources.

The analysis of data was done in two phases. In Phase I, the focus was on overall understanding of security and police reform priorities amongst the respondents. The aim here was to establish whether the reform priorities at the national level matched the understandings and expectations of the local populations and also to provide the basis upon which perceptions towards responsiveness of the reform process was understood by respondents. For this purpose, respondents were asked three specific questions which were also represented by the first three open-ended questions in the questionnaire.³²³ These included; what the respondents considered as the most important security issue(s) in their neighborhood; whether they were aware of government efforts in guaranteeing their security; and who they thought provided security in their neighborhood.

Phase II focused on our questions in relation to the four officially stated priority areas of police reform. Qualitative analysis in this phase was based on what the respondents perceived to be the progress in each of the main reform areas. The quantitative element was structured around the analysis of responses to our Likert – type items developed from the four officially stated priority areas of reforms, namely; Police image, accountability and partnerships; Professionalism, terms and conditions of service; Operational preparedness, tooling and logistical capacity; and Institutional, policy and legal reforms. In terms of presentation of the analysis in this chapter, in this Phase, we first present the qualitative data followed by our questionnaire data.

Analysis of primary qualitative data in this chapter was done using Nvivo which is a Computer - Aided Qualitative Data Analysis System (CAQDAS) described in Section 1.8. Whilst all the interviews were transcribed and themes categorised as nodes in Nvivo, audio recordings for the focus group discussions were exported into Nvivo as audio files and selections

³²³ Appendix IV: Questionnaire for Members of the Public (QMP)

coded into themes which were predetermined to four officially stated reform priorities at the national level. The focus group discussions were not fully transcribed owing to the length of the discussions. Rather, they were recording in the form of detailed notes on each FGD.

Processing and analysis of our primary quantitative data derived using QMP was done both manually and electronically using the statistical package for social sciences (SPSS). The research assistant helped with the data entry into codes identified by the researcher. Analysis of data generated using SPSS was only limited to the descriptive level using the frequency distributions and cross tabulations.

The questionnaire was divided into two sections. The first section included respondents' background for the purpose of providing a detailed analysis of security needs and perceptions across gender, age and level of education. Section B of the questionnaire was divided into two parts. Part 1 sought to gather data relating overall understanding of security and police reform process and relate mainly to analysis in Phase I. Part 2 contained Likert-type statements with both positive and negative items used to obtain the public perceptions with respect to four main areas of police reform and relates to Phase II of our analysis.

The responses to each individual item on the questionnaire were re-coded by assigning them numerical values. A score of 5 was assigned to strongly agree option and 1 for strongly-disagree option for positive items. The scores were however reversed for negative items with a score of 1 assigned to strongly agree option and 5 for strongly-disagree option as shown indicated in Table 8 below.

Table 8: Re-coded response options

Response option	Positive item score	Negative item score
Strongly agree	5	1
Agree	4	2
Neutral	3	3
Disagree	2	4
Strongly disagree	1	4

The scores were then aggregated to obtain the total score in each reform area. The expected mean score for each of the five attitude areas were used to determine whether the respondents had favourable or unfavourable perceptions. A score above the expected mean score was construed to mean favourable perception while scores below the expected mean were construed to mean unfavourable perceptions. Since there were equal numbers of items in each reform area (4), each area of reform had an expected score of 15, obtained by getting the average of the sum of marginal scores in each area. The overall public perception towards the entire police reform process was done by using the same process, this time aggregating the scores for each of the reform areas.

The choice of the strategy described above was due to a number of reasons. First, it allowed for triangulation of the data derived from various sources. Secondly, it provided an opportunity to offset the inherent weaknesses associated with both quantitative and qualitative methods (Bryman, 2012). It also provided an opportunity to provide empirical grounding of the qualitative data thus giving us the opportunity to develop a more robust analysis of the progress as much as impact of police reform process in Kenya since 2007.³²⁴

6.3 Public Security Needs, Priorities and the Police Reform Process

Understanding ordinary peoples' security needs alongside their priorities for security sector reform (police reform in Kenya in this case), was

³²⁴ See Chapter 1 for further clarification.

significant in determining progress as much as impacts of the police reform process on the Kenyan public. This presumes a Community-Based Approach to Criminal Justice Assessment that grounds reforms decisions on the needs of communities and ensures service orientation (ISSAT, 2014). Thus, an understanding of community security priorities was important in determining progress in police reform process in Kenya. What was the understanding of security and police reform process amongst the Kenyan population? Responses to this category of questions were according to three areas, namely: the most important security issue(s), awareness of government efforts to guarantee security and justice and identification of actors perceived to provide security amongst the local populations.

6.3.1. The most important security issue(s) in the neighborhood

We sought to determine the extent to which police reform priorities set at the national level matched with community safety and security priorities by asking the question; 'What do you consider to be the most important security issue in your neighborhood? This was included in both the questionnaire and focus group discussions. Responses to the questionnaire largely emphasized insecurity related to crime in the neighborhood. These included; robbery with violence, theft, carjacking, witchcraft, homicides, presence of illegal guns, and alcoholism amongst others.

We further probed our questionnaire respondents to determine whether these crimes affected them at personal level or community level. Majority of our questionnaire respondents (84.1%) considered these as general insecurity affecting the community, while a minority (15.9%) also considered them as direct personal insecurity. This perception was high amongst both sexes with men (81.8%) and women (88.0%). This outcome can be reliably be interpreted to mean that community safety and security was a priority amongst our questionnaire respondents. This finding is reinforced by its consistency with IPSOS (2014) national survey, in which

respondents (67%) perceived general insecurity, as the most serious problem facing Kenya as at December 2014.

Given the inherent weaknesses in the questionnaire method,³²⁵ the responses obtained using our questionnaire however did not yield sufficient data in terms of community security priorities. Whilst these responses suggested that respondents prioritized community safety and security, they did not provide us with answers as to what these community safety priorities were. The focus group discussions provided a more nuanced exploration of community security priorities and expectations in police reform process compared to our questionnaire. The FGD participants listed their insecurities caused by issues like tribalism, unemployment, high cost of living, drug abuse, illiteracy and poverty amongst others. A respondent in the youth group considered security to be broad to include issues like feeling of comfort, living in an environment where dignity is upheld and the rule of law adhered.³²⁶ There was consensus amongst focus group participants that any reform process should be geared towards limiting the adverse effects caused by factors that contribute to community insecurity.³²⁷

The objective of police reform process designed at the national level was to make the police professional, effective and efficient in the provision of security and accountable to civilian authorities.³²⁸ In the context of post-election violence of 2007, the police reform process was meant to reduce recurrence of violence and create conducive environment for political, social and economic development, which sit well with the normative claims of OECD DAC (2007).

We sampled some of the issues the focus group discussion participants wished the police reform to address. These included; addressing corruption in the police service, tribalism, improving police image and courtesy in dealing with members of the public amongst others. As for

³²⁵ See; Bryman(2012)

³²⁶ FGD1

³²⁷ FGD1,2&3

³²⁸ See Chapter 3

corruption, a participant in the female only group observed that, police corruption is the source of insecurity and it would be fair if it can be reduced.³²⁹ This perception found favour in the wider literature in corruption in Kenya³³⁰ and also in the debates amongst Kenyan public particularly in response to Al Shabaab's terrorist attack in Mandera which was attributed largely to the police and immigration officials fraudulently facilitating entry of Al Shabaab militants into Kenya.³³¹ Against the above backdrop, focus group discussions suggested that community security priorities did not differ greatly from the national agenda for reform, as for example, corruption was one of the key issues police reform sought to address at the national level and remained so amongst the local populations.

The process of designing the police reform agenda, as has already been discussed in Chapter three, was a deliberate effort that involved public participation in terms of asking them the kind of policing they sought.³³² These priorities have not changed and still remain important to the Kenya population given the responses generated from some existing surveys, for example IPSOS (2014) and Usalama Reforms Forum (2014b), and reinforced by our focus group discussions.

The implementation of reform priorities however showed divergences between the public expectation and the national priorities. A narrative account of a participant in our community leaders' focus group illuminates this point. The participant had reported a robbery case and was asked to raise the police when he saw the suspected robbers. He went ahead and did as requested only to be told that there was no vehicle that could be used to apprehend the suspect.³³³ A similar experience was shared by a female respondent who gave an account in which the police asked her to get the people who had threatened her through text messages, yet she

³²⁹ FGD 3

³³⁰ See; Transparency International (2014)

³³¹ See; Otsialo & Hajir (2014)

³³² Interview with K-Int2

³³³ FGD3

did not have the capacity to investigate.³³⁴ Nuanced in these narratives are the un-met expectations from members of the public who are aware of what they required from the police reform process. The members of the public expect the police to be at the forefront in investigating their concerns yet narratives from the field demonstrate that this was yet to be achieved.

Our focus group discussions also revealed that youth unemployment is widely perceived to be a major driver of insecurity amongst the communities where we conducted the research. For example, a participant in the focus group discussion quipped that the biggest problem in the communities is that of the youth going wild to the extent that they no longer see crime as abnormal.³³⁵ This finding is consistent with IPSOS Survey which rated youth unemployment amongst priority issues alongside the rising cost of living and insecurity.³³⁶ The women in the FGD on their part gave experiences they undergo in the course of their business particularly in Kibuye market and Bus-park citing harassments from the youths well known to the police yet no arrests are ever made.³³⁷ The researcher's experiences during data collection also presented the awareness of unemployed youth as a major public security concern. A respondent advised us to be careful while conducting research in the Nyayo Estate of Nairobi as we could easily lose our laptops to many unemployed youths in the neighborhood.³³⁸

The perception of youth unemployment being a security concern was also shared with the youths who participated in the focus group discussion.³³⁹ Thus, unemployed youths are perceived to be a major source of insecurity in the communities despite the efforts beyond the police reform to constructively engage the youth. This presents an interesting find considering that the youth in our questionnaire appear to be more informed about what the government is doing to guarantee security and

³³⁴ FGD2

³³⁵ FGD3

³³⁶ IPSOS (2014)

³³⁷ FGD2

³³⁸ QMP1

³³⁹ FGD1

justice (see Table 10) and even have a fairly positive perception towards the overall responsiveness of the police reform process to public security needs (see Table 31).³⁴⁰

Apart from widely shared concerns in terms of important security issues in the neighborhood, women respondents in our focus group discussions were particular on their personal security, which many perceived was not adequately addressed in the police reform.³⁴¹ For example, a woman participant faulted her local clan elders for impeding women's access to justice, accusing them of discouraging women against reporting abuses against women to the police..³⁴² This finding perhaps helps to explain the fact that very few women report their cases to the police or other established judicial systems. An example in this case is the finding by IPOA which noted that during the period January 2014-June 2014, it only received 13% complaints from women compared to complaints by men which stood at 60%.³⁴³

At another level, the women in the FGD also noted their inability to articulate their issues due to police harassment. For example, a participant noted that the number of times she has had encounters with the police, she left without explaining her problem due to police harassment, and they are hardly allowed to explain themselves. She observed, 'wasikilize ujielezee shida zako. Watuelewe sisi kina mama' (they need to listen to your problems. They need to understand us as women).³⁴⁴ From the foregoing, the focus group discussion with women suggests that police reform in Kenya was not widely perceived by local women to have strong agenda for the women.

6.3.2. Delivering Security and Justice to the People

Having examined what was considered important by the local communities in terms of their security and policing needs, we now explore

³⁴⁰ See Section 6.5

³⁴¹ FGD2

³⁴² FGD2

³⁴³ IPOA (2014)

³⁴⁴ FGD2

what the respondents considered the government was doing to deliver security and justice within the context of post-2007 police reform process. In this area, we sought to better understand the respondents' awareness of the government efforts in improving ordinary people's sense of security and justice. In this way, we considered awareness of the police reform process to be sufficient reason to validate the responses to our questionnaires in terms of perceptions. The argument here was that if the respondents were not or were less aware of the police reform process then it would be difficult to determine on what basis their perceptions derived. Thus, we considered that the higher the number of respondents aware of the efforts, the more valid the responses regarding the perceptions were presumed and vice versa.

Since this question category in the questionnaire was not adequate to reliably elicit responses on awareness of police reform programme, we corroborated the findings from our questionnaires with the data obtained from focus group discussions. The finding from our questionnaire revealed that majority of our respondents (73.3%) was aware of police reform process, while only 26.7% was less aware. Awareness of police reform process was not determined by the respondents' demonstration of competence of the police reform process, but by the researcher's inference of indicators that suggested improved provision of security that fit the frame of police reform process.

These indicators included issues like mentioning of police reform, recruitment of more police officers, enhanced community policing and patrol in the neighborhood, reintroduction of the rapid response call centre popularly known as 999 amongst many others. Where these elements featured, we construed them to mean awareness and vice-versa. One weakness with this approach however, was that it was not possible to explicitly determine the extent to which the respondents understood the reform process. With this in mind, it was therefore reasonable to make references to public perception as the responses derived from our questionnaires were based on awareness of the police reform.

We cross-tabulated results to this questionnaire item across county, gender and age to get the picture of level of awareness of police reform across these factors and compared these with the data obtained from our focus group discussions. In terms of locality, 73.9% (Nairobi) and 72.5 % (Kisumu) of the respondents were aware of the police reform. We interpreted this to mean that there were no major variations in terms of awareness of police reform based on the two locations (Nairobi and Kisumu) from which questionnaire respondents were drawn. Some significant variations at the descriptive level were however noted with respect to gender amongst our questionnaire respondents. More females (80%) than men (69.6%) were aware of the government efforts to guarantee security and justice through police reform. This is illustrated in Table 9 below.

Table 9: Delivery of Security and Justice to the People: cross-tabulation by gender

Sex of the respondent * What the government is doing to guarantee security and justice Gender Crosstabulation					
			Aware	Not aware	
Sex of the respondent	Male	% within Sex of the respondent	68.6%	31.4%	100.0%
	Female	% within Sex of the respondent	80.0%	20.0%	100.0%
Total		% within Sex of the respondent	73.3%	26.7%	100.0%

The above finding however presents a different picture from the focus group discussions and existent literature. Whilst the participants in all our focus group discussions demonstrated awareness of police reform process, the women participants did not appear more aware of the police reform process than their male counterparts and the youth. Additionally, the evidence that a smaller proportion of women(13%) compared to men(60%) during the period June 2014-December 2014 (IPOA, 2014) presented complaints to IPOA is indicative that many women may not have been exposed to the role of IPOA amongst other reform initiatives, or alternatively that IPOA's awareness programmes had not had significant impact on women amongst other factors. Thus, the divergences in our questionnaire to IPOA (2014) could have been due to

small number of women in our questionnaire respondents³⁴⁵ though it nevertheless raised the need to further interrogate access to improved police service to women.

We had mixed responses to qualitative elements in our questionnaire. Some respondents took a moderate position in assessing what the government had done while others remained extremely critical. An example of a moderate assessment from Kisumu was that 'what they (the government) are doing is not good enough' (sic),³⁴⁶ while another respondent from Nairobi noted that 'we feel the government is not doing enough.'³⁴⁷ More critical of government effort included responses like 'the government is doing nothing, nothing completely. I cannot lie' (sic)³⁴⁸ while another critic introduced ethnic undertone noting that 'as long as Kikuyu's are in power nothing will change.'³⁴⁹ These responses suggested some form of awareness of the police reform though there was little faith in its delivery. Notable was the fact that more critical responses came largely from opposition zone of Kisumu in which most respondents were diametrically opposed to most government initiatives.

An interesting finding in the questionnaire was with regard to age. Younger respondents (18-24) (85.7%) were more aware of government effort in improving security compared to the middle aged (25-34) (72.2%) and mature adults (35 and above) (66.7%). This may have been due to heightened government initiated youth activities at the time of data collection. There was a sustained campaign by the Jubilee administration targeting the youth through the establishment of the Youth Fund and the revamping of the National Youth Service to provide training for the youth with the view to reducing youth involvement in crime. This could have led to higher level of awareness amongst the youth as indicated in Table 10 below.

³⁴⁵ There were only 35 women representing only 40.7% of all our questionnaire respondents.

³⁴⁶ QMP 86

³⁴⁷ QMP57

³⁴⁸ QMP 84

³⁴⁹ QMP70

Table 10: Delivery of Security and Justice to the People: cross-tabulation by age

Respondents' age * What the government is doing to guarantee security and justice Crosstabulation					
			Aware	Not aware	
Respondents' age	18-24 years	% within Respondents' age	85.7%	14.3%	100.0%
	25-34 years	% within Respondents' age	72.2%	27.8%	100.0%
	35 and above	% within Respondents' age	66.7%	33.3%	100.0%
Total		% within Respondents' age	73.3%	26.7%	100.0%

A comparison between the level of awareness and the perceptions of responsiveness of police reform process towards public security suggested some kind of association. Based on our quantitative data above, there appears to be some form of association between age of respondents and their level of awareness of police reform process. The younger generation respondents were more aware of the police reform process compared to older respondents. When we compared this with perceptions towards responsiveness to police reform, younger respondents considered police reform to be more responsive. This could have been due to the fact that at the time, the government had announced that it would recruit about ten thousand youths into the police service thus raising prospects for employment amongst the youth. Though the recruitment exercise was nullified (Ogemba, 2014), it nevertheless may have generated lots of interest in the police reform process amongst youth.

Focus group discussants demonstrated some form of awareness of police reform process for example community policing. Whilst it was not our intention to explore the form of community policing pursued at this point, the fact that respondents in the focus group discussions identified with community policing was an indicator of reform awareness. For example, a male participant noted; 'they are at least trying, they have even brought about community policing.'³⁵⁰ Overall, responses in our questionnaire and

³⁵⁰ FGD1

focus group discussions were indicative that indeed a majority of our respondents were aware of what was being done to improve their security through police reform though these efforts still fell below their expectation.

6.3.1. Provision of Security: The Actors

In order to improve our understanding of which actors are perceived to be important in the provision of security, we asked questionnaire respondents and focus group participants the question; who provides your security? The question was inspired by two reasons. First is the argument that an audit of who is providing policing is the starting point to understanding effective provision of security and the fact that it also helps determine whether any support can be given to improve and strengthen them (Baker, 2011). Secondly, police reform literature is dominated by 'local ownership' or 'people-centred' priorities which to a large extent are based on the donor–recipient dichotomy lens. Thus, it is necessary to understand how local ownership debate is manifest in the Kenyan context, particularly with regard to state and non-state actors, in terms of security provision to local populations.

The immediate response to this questionnaire item was recorded as first mentioned while others were recorded as spontaneous.³⁵¹ First mentions were those responses produced without probing, while spontaneous responses were those produced when the interviewer probed the respondents and allowed them time to reflect on provision of security. First mention was considered to be the most preponderant actor in the production of security and public order at the local level, while spontaneous responses were based on the order in which they appeared.

The state security agencies including the police ranked poorly in terms of provision of security to the locals. Majority of our questionnaire respondents indicated 'other' (47.1%) as providers of security followed by private security actors (23.5%). Responses under 'other' category

³⁵¹ This categorization borrows from the researcher's own experience in market research.

included 'God' 'self' 'neighbors' and 'private guard' inter alia. The police ranked third with (21.2%) while vigilante groups were fourth with 7.1%. This is shown in Table 11 below.

Table 11: Provision of Security - The Actors

Who provides your security-First mention					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Other	40	46.5	47.1	47.1
	Private Security Company	20	23.3	23.5	70.6
	Kenya police	18	20.9	21.2	91.8
	Vigilantes	6	7.0	7.1	98.8
	National Intelligence Service	1	1.2	1.2	100.0
	Total	85	98.8	100.0	
Missing	Non-response	1	1.2		
Total		86	100.0		

The results indicate that nearly 80% of security provision for the participants is in the hands of the non-state actors (neighbours, self, vigilantes, private guards inter alia) indicating the pluralist nature of public ordering and security. The state's monopoly over coercive force in public ordering is only limited to nearly 20%. This representation is the case not only for the respondents as an overall cohort, but also cuts across both gender and location. For example, in terms of gender, state provision of security was females (25.8%), men (20.0%) while in terms of location Nairobi (22.2%) and Kisumu (21.7%).

A similar finding was also witnessed in our qualitative elements of the questionnaire and also focus group discussions. Take two questionnaire responses from Nairobi's Nyayo Highrise estate for example, one noted, 'at the estate level I haven't seen what role the government is playing'³⁵² while another reported that 'we have no option but to erect a wall and get a guard.'³⁵³ These responses are indicative of an absence of either the government in provision security, an alternative to which respondents

³⁵² QMP6

³⁵³ QMP57

either ensure their own security or employing guards, as noted by another respondent, 'It is an individual to provide his/her own security'³⁵⁴

Limited visibility of government in provision of security also featured dominantly in focus group discussions. Whilst the participants were able to mention state institutions responsible for provision of public security and justice including the police, the judiciary, office of the prosecutor amongst others, and indeed explained their role, most respondents did not regard them highly in terms of provision of security and justice to ordinary people. A participant noted that provision of security and justice is what 'they should provide but "bado wameshindwa" (they are unable)'.³⁵⁵ The assertion from the above participant indicates that though the existence of these state institutions and their roles are known to the people, the state institutions are weak and cannot fulfill their mandate.

The findings in our questionnaire responses and focus group discussions are not strange as they confirm existent research and survey literature. Evidence suggests that not only in Kenya but also across sub-Saharan Africa, at least 80% of justice services are delivered by non-state providers (OECD DAC, 2007, Podder, 2014). Baker (2011) reported that in two of four federal states of Nigeria, non-state policing systems were the preferred choice of security delivery 88.9% and 62.5% of the time. The state security institutions are not considered by the populations as the first choice in making communities secure.

Kenya is therefore no exception in terms of public preference for non-state actors to provide security. This is largely due to a relative absence of the state and its agencies in certain spaces. Researcher experiences in Obunga slums in Kisumu during the re-launch of community policing amplify this point. A police officer disclosed that apart from that particular day, they hardly get into the slum as it is dangerous for them.³⁵⁶ Further, a key informant also noted that the slum harbours dangerous youth groups that remain in hiding, and the police cannot reach them, 'kuma gin tiereno

³⁵⁴ QMP70

³⁵⁵ FGD1

³⁵⁶ Interview with Police officer(Kisumu)

be polis ok nyal chopo' (and wherever they are the police cannot access).³⁵⁷

The finding about non-state actors' dominance in provision of security in Kenya could be as a result of two factors. First, security in Kenya, particularly policing was never constructed with the local people's concerns at the centre of security. Like elsewhere in postcolonial Africa, policing was constructed purely to do with property and ownership of property and how to secure them and make sure that the natives were taken care of in terms of mobilising them for labour and containing them.³⁵⁸ This did not change at independence and so amongst a huge percentage of the Kenyan polity, the police continue to be perceived as illegitimate.³⁵⁹

Secondly the design of modern policing in Kenya was based on a foreign model. It borrows heavily from the first Indian Police Act. The Police Act that was repealed in August 2012 is the original Indian Police Act of 1861 which British brought Kenya in 1926. The procedure, operational policies of the police, institutional architecture of the police as they were and even as they are now, are the same the philosophy and the vision of the police as we have it today.³⁶⁰ Thus, protection of the regime through the police force still remains the basis upon which reform process is understood.

As part of our thesis analysis, we consider the question; 'was the post 2007 police reform process the appropriate model for Kenya especially where 80% of the public security provision is control by the private sector? The question invites us to re-examine the discourses and processes undertaken in the process. These have concentrated on improvement of the capacity of police through training and equipping the police³⁶¹ and developing the institutional framework for policing thus suggesting a state-building approach which assumed that building capacity of the police

³⁵⁷ Interview with CSO3

³⁵⁸ See; Gimode (2007)

³⁵⁹ Interview with CSO2

³⁶⁰ Interview with CSO2

³⁶¹ See Section 4.4

would automatically lead to efficient service delivery and legitimacy. This position is illustrated by a focus group participant thus; 'I feel they placed the cart before the horse. They tended to reform the administration of the force rather than reforming the police themselves.'³⁶²

In the preceding section, we sought to examine public understanding of security and police reform based on three parameters, namely; most important security issues in the community, awareness of police reform and determination of actors in provision of security to local populations. We have established that the priorities of the respondents did not differ from the priorities set at the national level though the implementation of the police process was yet to meet these expectations. The respondents have also demonstrated awareness of the police reform process and suggested that nearly 80% provision of security is under the non-state actors. Based on these findings, we now have sufficient grounds to explore the progress and responsiveness of police reform to policing and public security needs in perception terms.

6.4 Priority Areas of Reform and Results for the Public

This section aims to analyse public perceptions on progress on specific areas of post-2007 police reform. It represents the second analytic phase of this chapter and focuses on specific reform areas within the four priority areas of police reform (see Table 12 below) as articulated by the Ransley Committee (GoK, 2009). The analysis assumes a QUAL→quan approach described in Section 6.2, beginning with analysis of a range of available secondary sources and primary qualitative data followed by quantitative data from our survey questionnaire.

³⁶² FGD1

Table 12: Linking police reforms to results for Kenyans

NO.	REFORM ISSUE	RESULTS FOR KENYANS
1	Police image, accountability and partnerships	<ul style="list-style-type: none"> i) Reduced corruption in the police ii) Increase in reliability of police iii) Reduced human rights violations by the police iv) Increase in public trust and confidence in police services v) Increase in public satisfaction with the police vi) Increase in the level of satisfaction among the police officers vii) Improved relationship between police and the public viii) Neighbourhood safety ix) Improved gender balance in the police services x) Improved ethnic balance
2	Professionalism, terms and conditions of service	<ul style="list-style-type: none"> i) Improved police efficiency ii) Increase in the proportion of offences brought to justice iii) Reduced response time to distress call by the public iv) Increase in reliability of police v) Increase in public trust and confidence in police services vi) Improved public image of the police services and profession vii) Reduced corruption in police viii) Increase in public satisfaction level with the police service ix) Reduced incidences of ethnicity and tribalism in police services Boost in morale of police Increase in the level of satisfaction among the police officers
3	Operational preparedness, tooling and logistical capacity	<ul style="list-style-type: none"> i) Reduced crime per capita for the public ii) Reduced cost of crime and violence on business in Kenya iii) Reduced cost of organized crime and violence on business in Kenya iv) Increase in reliability of police v) Enhanced peace and stability vi) Improved police efficiency vii) Increase in the proportion of offences brought to justice viii) Reduced response time to distress call by the public ix) Increase in public satisfaction level with the police x) Boost in morale of police xi) Neighbourhood safety
4	Institutional, policy and legal reforms	<ul style="list-style-type: none"> i) Improved police efficiency ii) Increase in public satisfaction level with the police service iii) Increase in the level of satisfaction among the police officers iv) Reduced incidences of ethnicity and tribalism in police service v) Improved public image of police service and profession vi) Reduced corruption in police

Source:(GoK, 2009, p.218-219)

6.4.1. Institutional, Legal and Policy Reforms

Kenya's post 2007 police reform involved a number of institutional legal and police reforms. The new constitution was passed, and police acts (the National Police Service Act, 2011, The National Police Service Commission Act 2011 and the Independent Policing Oversight Authority Act 2011) and a raft of policies and regulations operationalizing the police reform process were put in place.³⁶³

These had an impact on the policy direction on the police reform process already discussed in Chapter 4. However, the extent to which these institutional, legal and policy framework shaped police reform process and how they responded to local security and policing needs remain unclear.

1. Public perception towards the police corruption

The establishment of a transparent and accountable system has been one of the most difficult challenges affecting Kenya's transformation agenda. The recent Transparency Corruption Index considers Kenya as very corrupt with a Corruption Index of 27 and ranks 136/177 in the 2013 ranking.³⁶⁴ The wider societal corruption has filtered into the police with the statistics indicating that the police lead amongst government departments perceived to be most corrupt with 48.1% followed by traffic police at 18.7% (EACC, 2013). Similar findings were also reported in Kenya's AfroBarometer survey for December 2014 amongst 2397 adult Kenyans in which three-fourths (75%) of respondents reported that "most" or "all" of the police are corrupt, followed by government officials (46%) and members of Parliament (45%) (IDS, 2015).

Corruption therefore remains one of the biggest challenges in making policing responsive to public security needs, and it was a priority area for the government and for local communities. Corruption has been institutionalised right from recruitment, promotion, deployment amongst others. On average, each Kenyan had been forced to bribe the police 4.5

³⁶³ See to Section 4.3.2 for further details

³⁶⁴ See; Transparency International (2014)

times a month, paying them on average US\$16 per month (Baker and Scheye, 2007).

The national police reform was to address corruption in the police service through the establishment of institutions, both internally and externally that would fight the vice. The Internal Affairs Unit and other external agencies including IPOA, EACC, and Commission on Administrative Justice amongst others were all empowered to help fight corruption not only in the police but across the Kenyan society. To what extent have these new police reform institutions helped change public perceptions about police corruption?

We explored this question in our focus group discussions and questionnaire and compared this primary data with existing secondary data. Most of our focus group participants stated that corruption is a major problem in the police service. As with the findings in our semi-structured interviews with key informants, there was scepticism that the establishment of these institutions had not addressed the problem of corruption.³⁶⁵ The many institutions fighting corruption in Kenya made it difficult to coordinate the fight against corruption in the police service.³⁶⁶ Most participants in all our focus group discussions largely perceived that police in Kenya are corrupt,³⁶⁷ and that there has not been departure even with the establishment of reform institutions to fight corruption.

However, some participants did not blame the police in total for corruption, and argued that corruption in the police service is a reflection of the society. Others argued that priority in the implementation of police reform did not focus on individual change in the police service, but on the establishment of institutions.³⁶⁸ Thus, attempts to fight corruption should not only be limited to the police, but must also target wider societal transformation as captured by the comments of a participant; 'the entire

³⁶⁵ See Chapter 4

³⁶⁶ Interview with K-Int5

³⁶⁷ See; Transparency International(2014)

³⁶⁸ FGD1

society requires transformation.³⁶⁹

The proposal for wider societal transformation is however hampered by lack of wider opportunity for the public in the implementation of police reform as noted by one participant; 'We do not get platform where we can adequately air out what we feel the government should do.'³⁷⁰ Yet another respondent argued that the laws in the country make it easy for the public and the police to abet corruption. The respondent cited the Traffic Act, for which one would rather bribe the police than be subjected to cumbersome court process.³⁷¹ Women participants were even more succinct about corruption in the police. 'Corruption is the key. Police most of them are corrupt, if it can be reduced it can be fair' (sic).³⁷²

The findings in the questionnaire results also point to similar direction as our focus group discussions. Table 13 below shows that perception towards corruption in the police has not positively changed. Our questionnaire respondents perceive that corruption in the police service continues to thrive despite the efforts to change the state of affairs. About 85% of all the respondents disagreed that there is reduced corruption in the police service compared to only 11.6% that feels there is reduced corruption in the service.

Table 13: Perception towards corruption in the police service

There is reduced corruption in the police service					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	3	3.5	3.5	3.5
	Agree	7	8.1	8.1	11.6
	Neutral	3	3.5	3.5	15.1
	Disagree	51	59.3	59.3	74.4
	Strongly disagree	22	25.6	25.6	100.0
	Total	86	100.0	100.0	

This state of affairs affects negatively the delivery of police service to the

³⁶⁹ FGD1

³⁷⁰ FGD1

³⁷¹ FGD2

³⁷² FGD2

public. It also affects the relationship the police and members of the public. Nearly all the participants had in one way or the other witnessed corruption in the police service, either as active participants or witnessed the police engaged in corruption.³⁷³ In overall, compared to perceptions about police corruption before 2009 when police reform begun, the institutions responsible for the fight against corruption in the police are perceived not to have improved respondents perception about police corruption.

2. Perception towards police oversight

At the core of post-2007 national police reform agenda was the issue of police oversight. Ransley committee recommended the establishment of oversight mechanism that will not only benefit the police themselves, but give public confidence that their complaints are being dealt with (GoK, 2009). An elaborate oversight mechanism was developed involving the three arms of government (Judiciary, Executive and Legislature), Internal Affairs Unit and oversight exercised by independent bodies.³⁷⁴ As before, our analysis of perceptions towards police oversight draws from our primary data sources alongside secondary sources.

Key informant interviews revealed that oversight of police was yet to be embraced by the public and the police. For example, interviews with police officers during a workshop for the establishment of the Internal Affairs Unit showed police indifference to both internal and external oversight, while interview with a key informant from NPSC also suggested that the tensions between the National Police Service Commission and the IG's office was due to the IG's office indifference to civilian oversight.³⁷⁵ Acceptability of oversight mechanism was still a challenge. At the time of our Interview with IPOA representative, it was established that as a relatively new institution, IPOA was yet to begin to deliver on its mandate.

³⁷³ FGDS 1,2 & 3

³⁷⁴ See; Figure 3: Police accountability mechanisms in Kenya

³⁷⁵ Interview with K-Int1

IPOA (2014) however reported substantial improvement of police oversight between its formation and 2014. For example, the report noted remarkable improvement in terms of awareness by members of the public. It noted that during the period June 2014 –December 2014, it had registered a markedly high number of complaints at 610 compared to the previous period at 250 (an increase of 144%). Sixty six percent (66%) of the 610 complaints received were within IPOA's mandate compared to 46% during the previous period. This is indicative that the awareness on the kind of complaints handled by the Authority is gradually increasing in amongst the Kenyan public.

Though IPOA reported marked improvement in awareness by the public on the complaints it handles, public response to IPOA activities raise doubts about public understanding of IPOA mandate. For example, in September 2014, residents of Githurai Estate in Nairobi blocked the Thika Road for three days in protest against IPOA over the arrest of a police officer who had allegedly shot dead two brothers suspected to be robbers. The residents claimed IPOA was interfering with the police fight against crime in the area.³⁷⁶ The incident perhaps suggests that though the existence of IPOA may be known to the public, its mandate may not have been fully understood by the public.

The participants in our focus group discussions in Kisumu indicated that there was awareness of the oversight mechanisms though engagement with these institutions with the public still remained low. Most participants had not thought of submitting complaints to IPOA yet they had grievances against the police. Thus, whilst IPOA (2014) reported gradual increase in cases that fall directly under their mandate, the complaints raised by the focus group discussants and Usalama Reforms Forum (2014b) are indicative that many complaints against the police from the public are still unreported.

Most of the participants in the focus group discussions, especially women, were not aware how and where to channel complaints against the

³⁷⁶ Karanja (2014a)

police.³⁷⁷ This could be attributed to the fact that most independent oversight bodies are yet to decentralise their operations to the grassroots. The County Policing Authorities and Community Safety Committees had not been established at the time of data collection and writing of this thesis.

Responses to our questionnaire however raise optimism amongst respondents in relation to police oversight as shown on Table 14 below. Public oversight of the police was the only area where respondents have positive perception that police reform is responsive to public security needs. Of all the questionnaire respondents, 77.4% perceived that public oversight of the police has improved through the police reforms. The challenges IPOA had faced at the formative stages notwithstanding, perception amongst our respondents is high that public oversight has improved through police reform. These findings are consistent with IPOA (2014) which paints a positive picture of police oversight amongst the Kenyan population.

Table 14: Perceptions towards police oversight

Public oversight of the police has improved through the ongoing reforms					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	15	17.4	17.9	17.9
	Agree	50	58.1	59.5	77.4
	Neutral	10	11.6	11.9	89.3
	Disagree	7	8.1	8.3	97.6
	Strongly disagree	2	2.3	2.4	100.0
	Total	84	97.7	100.0	
Missing	Non-response	2	2.3		
Total		86	100.0		

The finding regarding perception towards police oversight in the questionnaire however raises some fundamental questions. Despite the enactment of the 2010 Constitution that provided enough guarantees through the Bill of Rights, human rights abuses in the police are still very

³⁷⁷ FGD2

high (see Table 22).³⁷⁸ While we do not claim that positive perception towards oversight is the result of the oversight bodies, the outcome of this item suggests the item may have been understood by the respondents to mean that public oversight mechanisms of the police should be strengthened. Overall, the fact that this response turned out as it did, did not however substantially affect the overall outcome in perceptions towards institutional reform.

3. Perception towards political interference

The literature on security sector reform process and the findings in Chapter 4 and 5 highlight that implementation of police reform is a highly political process. This is manifest in terms of either lack of political will to support the process or resistance to police reform from the wider political elites and amongst actors within the police sub-system. The manner in which political interests have so far influenced the reform process, for example the political interests in the vetting process, recruitment and the amendment of the police laws to suit the interests of the executive have fed into the public perception that indeed political interference is still rife in the police reform process. This perception cuts across key informants, the focus group discussions and our questionnaire respondents.

According to an MP allied to the ruling Jubilee Alliance, the institutions charged with police reform in Kenya are political creations and must therefore do business with the political leaders.³⁷⁹ These sentiments appear not just to reflect the opinion of a single politician but probably embrace the thinking amongst a substantial fraction of the members of the parliamentary committee of National Security and Administration. Political posturing in the committee during crucial bills touching on security amplifies this point. For example, the government side in the committee outnumbered their opposition colleagues in pushing for amendment of police acts to give the executive more control of the police. It is this perception from the political class that makes them interfere with

³⁷⁸ Also see; Usalama Reforms Forum (2014a); Transparency International (2014)

³⁷⁹ Interview with MP2

the reform process. On the other hand, those opposed to the political elite interfering with the reform process see political interference as the single most problem affecting the implementation of police reform as noted by a respondent, 'The problem we are faced with is not a technical problem or a legal problem, it is a political problem'.³⁸⁰

Whereas some key informants from the police reform institutions denied being subjected to pressure from the political elite, they indicated that political interference was a common phenomenon. For example, while our interviewee reported that the NPSC had not received any undue influence on their operations from the executive, he reported that the amendments to the police reform laws in June 2014 were due to political interference.³⁸¹ The comments by other key informants were similarly contradictory. A key-informant from IPOA claimed that there was no political interference, yet on the other hand suggested that political interference was one of the challenges facing police reform.³⁸² Most respondents viewed the office of the Inspector General to be more politicised.

The findings from the focus group discussions further reinforce the fact that though police reform process envisaged a depoliticised service, the perception that the political elite interfere in the police was still dominant. In Kisumu for example, the discussants claimed that most police officers were from Central and Rift Valley and were posted to the region to contain possible violence in 2013 general elections.³⁸³ These claims could not be factually verified though they are indicative of the politicised nature of the Kenyan police.

Both qualitative and quantitative elements of our questionnaire pointed to political interference in the police. Some of the qualitative responses singled out decision making and appointments in the police as areas where the political elite interfere with the police. A respondent noted that

³⁸⁰ Interview with CSO2

³⁸¹ Interview with K-Int1

³⁸² Interview with K-Int2

³⁸³ FGD3

‘some politicians influence the police decisions’³⁸⁴ while another noted that ‘when it comes to senior appointments, politicians interfere.’³⁸⁵ These sentiments find credence given the jostling by the political elite when it came to the appointment of new Inspector General. The political elite from Marakwet County lobbied for the appointment of ‘one of their own’ to replace Inspector General Kimaiyo who was forced to resign after Mandera attacks (Wanga, 2015). And indeed, Joseph Boinett, a Marakwet was nominated by President Uhuru Kenyatta to replace Kimaiyo, perhaps suggesting that the president’s decision was meant to stem the disquiet amongst Marakwet politicians.

This is a case in which the political elite use political support to demand concessions from the executive. The qualitative perceptions of political interference in our questionnaire quantitatively translated into majority respondents (86.2%) perceiving that politics still interferes with the police and the reform process while only 11.6% perceiving there is no political interference. These views are confirmed by the findings in Table 15 below.

Table 15: Public perceptions towards political interference

There exists political interference in the police					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	35	40.7	41.7	41.7
	Agree	36	41.9	42.9	84.5
	Neutral	3	3.5	3.6	88.1
	Disagree	8	9.3	9.5	97.6
	Strongly disagree	2	2.3	2.4	100.0
	Total	84	97.7	100.0	
Missing	Non-response	2	2.3		
Total		86	100.0		

Whilst it was not enough to claim politics interfere with the police reform process, it was significant to note how the interferences impact on the police reform process. For example, the decision to nominate Boinett

³⁸⁴ QMP53

³⁸⁵ QMP54

though meant to streamline police operations and intelligence gathering, sparked off disquiet amongst police officers who were Boinett's seniors while he was still in the police service and also generated debate about the president playing politics with security.³⁸⁶

4. Level of dissatisfaction amongst police officers

The welfare of Kenya police was a priority issue even before the post-2007 police reform. Previous reform documents for example (Kenya Police, 2004) identified police welfare as one of the areas that needed to be reviewed. Police welfare was not only a matter of the police but also a priority issue amongst the Kenyan public as well as civil society groups. The Kenya Police Reforms Working Group (KPRWG) for example has police welfare as one of the pillars upon which it is founded to push for improved welfare of the police.³⁸⁷

Mixed reactions were generated from interviews with police officers. Interviews with top police officers suggested that police welfare had improved. Improved housing, medical scheme salary increment are amongst issues credited to the reform process.³⁸⁸ Junior officers on the other hand considered reforms to be too little and had not improved their welfare.³⁸⁹ The divergence in perceptions in welfare, for example housing, amongst the officers was due to the fact that senior officers at the national level had better housing facilities compared to their junior counterparts and police stations in far flung regions. A female police officer noted; 'people are still living under funny conditions.'³⁹⁰ The understanding of the police officers is that police reform should be about their welfare to enable them execute their function. This understanding largely contributes to police dissatisfaction.³⁹¹ In terms of working conditions, a member of the civil society working on police reform described evidence room in a

³⁸⁶ Interview with K-Int8

³⁸⁷ Interview with CSO7

³⁸⁸ Interview with K-Int3

³⁸⁹ Interview with Police officer in Kilimani

³⁹⁰ Interview with Female police officer Kilimani Police Station

³⁹¹ Interview with OCPD Kisumu

Kenyan police station as; ‘looks like a store’³⁹² to mean the appalling conditions under which the police officers operate.

It emerged in our focus group discussions that the members of the public are of the opinion that police reform was yet to address the welfare of police officers hence their level of dissatisfaction remain high. As a result, the participants noted that the focus of the police on a daily basis is ‘what can I take home every day,’ to mean fraudulently collecting as much money as possible from unsuspecting members of the public.³⁹³

Our questionnaire responses also pointed to public perception that the level of dissatisfaction amongst police officer is high. Qualitative responses to the questionnaire by members of the public were indicative that the police are not satisfied. For example, statements like ‘very few are satisfied’³⁹⁴ and ‘I don’t think they are satisfied with their job’³⁹⁵ were dominant. The pay does not match their job specification as noted by a respondent ‘they work like donkeys, yet earn little money.’³⁹⁶ Because of the perception that the police are dissatisfied, one respondent described the police service as ‘the last job anybody would aspire to do.’³⁹⁷ Quantitatively, 85.7% of the respondents were of the opinion that the levels of dissatisfaction amongst the police officers remain high. This finding is illustrated in Table 16 below.

³⁹² Interview with CSO1

³⁹³ FGD1

³⁹⁴ QMP47

³⁹⁵ QMP54

³⁹⁶ Qmp14

³⁹⁷ QMP15

Table 16: Public perceptions towards police level of satisfaction

The level of dissatisfaction amongst police officers remains high					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	27	31.4	32.1	32.1
	Agree	45	52.3	53.6	85.7
	Neutral	5	5.8	6.0	91.7
	Disagree	5	5.8	6.0	97.6
	Strongly disagree	2	2.3	2.4	100.0
	Total	84	97.7	100.0	
Missing	Non-response	2	2.3		
Total		86	100.0		

The findings from our qualitative interviewing and the questionnaire were corroborated by IPOA (2014). None of the 40 stations they visited met the acceptable housing standards (IPOA, 2014). Our observation in the police stations also confirmed the sorry state of police stations in Kenya.³⁹⁸ Whilst there have been considerable efforts after 2009 to improve police welfare, the wider perception amongst the police officers and the public was that these efforts were still below public and police expectations. This has in turn affected police morale thus adversely affecting their service delivery.

6.4.2. Professionalism in the Police Service

The discourse on police professionalism gained prominence in Kenya particularly due to questions raised about the conduct of the police in Kenya's post-election violence of 2007. Issues regarding the reliability of the police, their level of professionalism, the influence of ethnicity and tribalism in the police and whether the police was managed in an open and transparent manner amongst other issues emerged under the rubric of professionalizing the police service. These issues form the result areas for police reform in terms of professionalization of the police and are presented below.

1. Perceptions towards police reliability

³⁹⁸ See

Police reliability was defined by the confidence levels of respondents in the police to provide an ordinary day-to-day policing service. We asked our respondents in both focus group discussions and questionnaire whether they thought the police were more reliable after 2008 than before 2007. Our focus group discussions generated mixed responses. Those arguing that the police are relatively reliable gave instances where they have had the police address their problems. For example, a lady participant in the youth focus group discussion noted, 'I had something to do in their offices. I noticed they have changed. I was given proper treatment.'³⁹⁹

Others however insisted that there is nothing positive about the police being reliable, while a few had not interacted with the police and therefore did not know whether the police were reliable or not. More important was the fact that perceptions regarding police reliability amongst the focus group participants were influenced by the relationship between members of the public and the police as observed by a respondent; 'these people are all biased and given time and opportunity they will talk bad about the police.'⁴⁰⁰

Qualitative responses to our questionnaire also generated mixed responses. Some respondents noted that the police are only reliable to the extent that a crime has been committed, and never in time to help stop crime. For example, a respondent observed; 'they are reliable but they are doing nothing.'⁴⁰¹ Others were however outright that the police are not reliable; 'they are still the same-no change.'⁴⁰²

For quantitative responses, only 30% of the entire questionnaire respondents perceive that the police are more reliable while the majority, about 70% (disagree 48.8%, strongly disagree 10.5%) disagreed that police are more reliable. The results are presented in Table 17 below.

³⁹⁹ FGD1

⁴⁰⁰ FGD1

⁴⁰¹ QMP84

⁴⁰² QMP53

Table 17: Public perceptions towards police reliability

Police are more reliable these days than before					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	1	1.2	1.2	1.2
	Agree	24	27.9	27.9	29.1
	Neutral	10	11.6	11.6	40.7
	Disagree	42	48.8	48.8	89.5
	Strongly disagree	9	10.5	10.5	100.0
	Total	86	100.0	100.0	

The findings in our focus group discussions are consistent with existing surveys about police reliability. Usalama Reforms Forum (2014a) for example noted that confidence amongst the Kenyan public in the police to provide day-to-day policing service has declined since 2012. Whilst the confidence level was 34% in 2012, this had declined to only 28% in 2014. Cumulatively, therefore, the results from the focus group discussions, questionnaire and secondary survey are indicative that police reform has not translated into improved reliability of the police.

2. Public perception towards police professionalism

Our focus in perceptions towards police professionalism was aimed at determining from our respondents how they perceive the police to strike a balance to reconcile varying conditions in their work and consistent with the Bill of Rights (GoK, 2010). Interviews with most key informants showed that they perceived little progress. For example, our key informant from IPOA noted that the police have not changed the way they do things.⁴⁰³ This position was supported by interviewees particularly from civil society organizations who perceived that the mind-set in the police is yet to change.⁴⁰⁴

Some focus groups participants pointed out some progress in terms of police professionalism. However, most of the participants argued that lack of professionalism is still a major challenge in the police service. In

⁴⁰³ Interview with K-Int2

⁴⁰⁴ Interviews with CSO2 and CSO7

particular, several women indicated that whenever they report to the police, their concerns were not taken seriously.⁴⁰⁵ A discussant narrated how the police asked her to identify whoever had broken into her house and later asked her to provide fuel to enable the police undertake investigations. The discussant noted that she got tired of the police and had to give up on her quest for justice.

Others noted that the police often want to establish their clients' socio-economic status before they begin investigations, with those perceived to be of high social status given preferential treatment.⁴⁰⁶ Underlying this is the issue of equity, irrespective of one's belief, ethnicity and gender, in the provision of services by the police which FGD participants felt was still wanting. It is noteworthy that equity was one of the areas members of the public indicated the police reform process should address.

The responses to the questionnaire confirmed public disappointments with the police professionalism witnessed amongst the focus group discussants. Only 17% of the questionnaire respondents perceive that the police are more professional in dealing with the public. The majority, 73.3% disagreed with the statement that the police are more professional as shown in Table 18 below. Where this feeling remains dominant, the willingness of the respondents to support the police reform process was also limited as evident in Kisumu where the public still remains indifferent to the police.⁴⁰⁷

This finding is consistent with the national survey conducted by IPSOS (2014). For example, asked how satisfied respondents who reported various crimes to the police, a majority (60%) reported they were not satisfied, 23% somewhat satisfied, while only 17% was completely satisfied with how they were treated by the police. This is important as this rate was lower before the post-2007 police reform process at 41% in October 2006 and 60% in September 2014 (See Figure 9: Rate of crime: Trend analysis).

⁴⁰⁵ FGD2

⁴⁰⁶ FGD2

⁴⁰⁷ Odiwuor (2014)

Table 18: Perceptions towards police professionalism

The police are more professional in dealing with the public					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Agree	15	17.4	17.4	17.4
	Neutral	8	9.3	9.3	26.7
	Disagree	52	60.5	60.5	87.2
	Strongly disagree	11	12.8	12.8	100.0
	Total	86	100.0	100.0	

3. Perception towards ethnicity and tribalism in the police service

During the period preceding 2007, the security sector was allegedly highly ethnicised with President Kibaki's Kikuyu community dominating leadership of the sector including the police (Katumanga, 2010). This did not change even after the signing of the power-sharing agreement between President Kibaki and Prime Minister Raila Odinga. Thus, the strong anti-Kikuyu sentiments that pervaded the political scene filtered into the police.⁴⁰⁸ Whilst there were deliberate efforts to reconcile the communities at the national and local level through national and local peace committees,⁴⁰⁹ there were no initiatives or systematic attempts to bridge the ethnic gaps in the police force.⁴¹⁰ Thus, though the gaps may have been latent over time, the possibility of re-emergence ethnic undertones in the police still exists.⁴¹¹

Interviews with key informants suggested ethnicity and tribalism are still dominant in Kenya's security sector including the police.⁴¹² Our key informants in Kisumu indicated that ethnicity is still a problem and cited the case of Kisumu where they claimed that most police officers in Kisumu County were from Kikuyu and Kalenjin communities.⁴¹³ Whilst two

⁴⁰⁸ See; Chege (2008); Murunga (2011)

⁴⁰⁹ Interview with CSO1

⁴¹⁰ Interview with Police officer attached to Kilimani Police station

⁴¹¹ Interview with Police Officer, Kilimani

⁴¹² Interview with CSO2

⁴¹³ This research did not establish from police records the claim that most police officers were from Kikuyu and Kalenjin communities.

of the interviewees in Kisumu noted that this had affected police-public relations in Kisumu where the latter feels the police were sent to deliberately deal with them,⁴¹⁴ in the event of electoral related violence in 2013 general elections, another did not see anything fundamentally wrong so long as police perform their function to the satisfaction of members of the public.⁴¹⁵

The findings from our focus group discussions were also indicative of the fact that the respondents perceived that ethnicity and tribalism are still dominant in the police service. In Kisumu for example, the feeling of the majority of all our focus group participants is that police officers from the Kalenjin and Kikuyu communities dominate the police stations in the area. Whilst posting of the officers to Kisumu may have had nothing to do with their ethnic affiliation, the dominant perception amongst our focus group discussants that the 2013 elections were rigged in favour Jubilee Alliance feed into perceptions of police ethnicity in Kisumu.⁴¹⁶

The findings from the questionnaire reinforce these sentiments. Qualitative responses showed that ethnicity is deep rooted and still hard to deal with. Comments suggested that ethnicity is not only limited to the police service but in the entire government where some sections of the country feel isolated. A respondent noted thus; 'one tribe has dominated in the government making things difficult.'⁴¹⁷

Quantitative responses in the questionnaires reflected the perceptions expressed qualitatively. Nearly 75% of all our respondents to the questionnaire perceive that indeed there are increased incidences of ethnicity and tribalism in the police service while slightly over 10% disagreed with the statement that there is increased level of ethnicity and tribalism in the police service. These findings are shown on Table 19 below.

⁴¹⁴ Interview with CSO3 and CSO6

⁴¹⁵ Interview with K-Int6

⁴¹⁶ FGD1 and FGD2

⁴¹⁷ QMP70

Table 19: Perceptions towards ethnicity and tribalism in the police

There are increased incidences of ethnicity and tribalism in the police service					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	25	29.1	29.1	29.1
	Agree	39	45.3	45.3	74.4
	Neutral	11	12.8	12.8	87.2
	Disagree	9	10.5	10.5	97.7
	Strongly disagree	2	2.3	2.3	100.0
	Total	86	100.0	100.0	

It was not feasible to distribute limited sample of 86 respondents amongst all the tribes in Kenya. We therefore did a cross-tabulation of counties against perceptions towards ethnicity in the police service. This was with the view to determining how political affiliations may have had an impact on perception in this area of reform. The finding in Table 20 revealed that a majority of the questionnaire respondents in Kisumu (strongly agree 37.5%; agree 42.5%) perceives increased incidences of ethnicity compared to respondents from Nairobi (strongly agree 21.7%; agree 47.8%). This could be due to the multi-ethnic composition of respondents in Nairobi compared to Kisumu which is dominated by the Luo community and which identifies more to the opposition.

Table 20: Perception towards ethnicity in the police by counties

County * There is increased incidences of ethnicity and tribalism in the police service Crosstabulation							
		There is increased incidences of ethnicity and tribalism in the police service					Total
		Strongly agree	Agree	Neutral	Disagree	Strongly disagree	
Nairobi	% within County	21.7%	47.8%	15.2%	10.9%	4.3%	100.0 %
Kisumu	% within County	37.5%	42.5%	10.0%	10.0%	.0%	100.0 %

The findings in relation to our primary data seem to reflect secondary sources. This is not only limited to the police, but also in the wider civil service in Kenya. A survey by NCIC (2011) found that some communities have greater share of civil service jobs than their population. For example,

Kikuyu, Kalenjin and Meru were the top three in the civil service with a representation of 22.3%, 16.7% and 5.9% respectively. This represented a variance in population of 4.7%, 3.5% and 1.5% respectively based on 2009 population census. More recently, a survey by the Public Service Commission revealed that Kikuyu (22.3%), Kalenjin (15.3%), Kisii and Embu have a fairly large representation relative to their population (PSC, 2014). This was an over-representation of 5.5%, 1.57%, 1.28% and 1.04% based on the 2009 population census.

While releasing the report, the Public Commission Chairperson Margaret Kobia attributed the disparity to tribalism and historical reasons and noted that since 2011 there have been deliberate attempts to rectify the problem. Going by the two studies however, there is no suggestion that there is progress as there appears to be no significant variation with the 2011 data. The two surveys are important to police and the entire security sector as they represent sectors with ethnic disparities. Kenyan politics is organized around ethnic mobilization (Hornsby, 2012) and as such, the overrepresentation of certain ethnic communities in the police and the security sector and in the entire civil service could be due to political domination of the ethnic groups. The report by the National Cohesion and Integration (NCIC) lends credence to this view. It observes; 'The Kikuyu and the Kalenjin have a disproportionate share of civil service posts compared to their population. Their proportion in the Civil Service exceeds the size of their share in the national population.' (NCIC, 2011, p.6). In terms of politics in Kenya, the two communities have dominated national politics the longest compared to other communities.⁴¹⁸

4. Perception towards transparency in the police service

Police transparency closely links with oversight of the police. It was hoped that the institutionalization of civilian oversight would open up the police and increase transparency and allow the public to have a say in how the police institutions are managed. As already discussed in the previous sections in this study, police operations have typically been clouded in

⁴¹⁸ See Section 2.6

relative secrecy. For example, the propping up of the administration police towards the 2007 election and their subsequent alleged involvement in the 2007 general elections raised questions on the goings on in the police. It opened up speculations that former President Kibaki converted the Administration Police into a political force (Hills, 2007).

Thus, merging the administration police and the Kenya police under one command alongside the establishment of civilian oversight authorities like IPOA and the NPSC were meant to enhance transparency in ways that would contribute to accountability. At the county level, proposals to have an elected representative chair the county policing authorities was also a step forward towards making police transparent and accountable to the people through the elected representatives. Have these efforts changed public perceptions towards transparency in the police?

While the focus group discussions expressed some confidence in the civilian oversight, there were limited responses regarding the transparency in the police service. This could have been due to the fact that we did not explicitly link civilian oversight and transparency for the respondents during the data collection process. However, a relatively exposed participant gave an account of what he expected in terms of what he considers in the police thus; 'What you can do to a community is openness. That openness, when my son is recruited correctly, trained by correct people and comes out with correct knowledge (sic)'.⁴¹⁹ Underlying these sentiments is the need for openness of the police to the public on matters regarding recruitment and training.

Though we did not generate substantial primary qualitative data on this area, we did marshal evidence that transparency remains a major issue amongst the police officers. For instance, lack of transparency in promotions and trainings remains one of the key concerns to the police for which IPOA recommends that 'NPSC in consultation with the NPS should ensure that promotions and training are based on merit and clear set regulations' (IPOA, 2014, p.29).

⁴¹⁹ FGD1

The qualitative responses in the questionnaire equally did not yield substantial results on this issue. However, in quantitative terms, the finding on perceptions of the public towards transparency in Table 21 suggests that the respondents perceive that the police is not managed in a transparent manner. Some 80.2% of our sample disagreed that the police is managed in a transparent manner while only about 12% of the respondents agreed with the statement that the police is managed in a transparent manner. Notable was also the fact that only 3.6% of the respondents were unsure of their responses thus indicating that the perception that the police is not managed in a transparent manner is dominant.

Table 21: Perceptions towards transparency in the police service

Police service is managed in a transparent manner					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	1	1.2	1.2	1.2
	Agree	10	11.6	12.0	13.3
	Neutral	3	3.5	3.6	16.9
	Disagree	42	48.8	50.6	67.5
	Strongly disagree	27	31.4	32.5	100.0
	Total	83	96.5	100.0	
Missing	Non-response	3	3.5		
Total		86	100.0		

A number of events and actions of the police could help explain this perception. For example, the outcome of the vetting of police officers did not meet public expectations.⁴²⁰ A number of prominent police officers that the members of the public expected to be retired through the vetting process survived the process.⁴²¹ An example in this case is a former Provincial Police Officer widely believed to be working with and protecting drug traffickers and accused of human rights violation survived the vetting process contrary to the expectation of the public.⁴²² While there may have been no evidence to incriminate the officer, the fact that the vetting

⁴²⁰ FGD1,2 & 3

⁴²¹ Interviews with MP2 and K-Int8

⁴²² Interview with K-Int8 however exonerated the officer.

committee provided him an opportunity to reappear before the same committee may have provided an avenue for the public to speculate that the officer had the protection of the state. Our interview with a Vetting committee investigator however suggested that there was no evidence to link the officer with all manner of public accusations.⁴²³

The 2014 new police recruitment process also reinforced the public perception that the police service is not managed in a transparent manner. The fact that the recruitment process was discredited by the civil society groups and the IPOA over allegations of corruption, tribalism, nepotism amongst other malpractices reinforced the perception of lack of transparency in the police.⁴²⁴

6.4.3. Police Image Accountability and Partnerships

Given the history of the Kenya police, the service to a large extent remained less legitimate in the eyes of the Kenyan public. Thus, police reform process sought to change this inadequate legitimacy in the eyes of the public. The reforms targeted to rebrand the police and give it a positive image. How far has this endeavour been achieved? This sub-section focuses on police image, accountability and partnership and uses four items. The findings largely present a picture of a police service that has not changed in the eyes of the public. These findings are presented below.

1. Public perception towards human rights abuses

Human rights abuses by the police have been documented and thoroughly investigated by civil society organisations including the Kenya National Commission on Human Rights and the IMLU just to mention a few. The UN Rapporteur for Human Rights (Alston, 2010) also documented systematic human rights abuses by the police in addressing Mungiki menace. Police reform process was to address these shortcomings.

⁴²³ Interview with K-Int8

⁴²⁴ Usalama Reforms Forum, (2014b)

Though human rights violations by the police formed the basis of civil society, particularly the Police Reforms Working Group, participation in the reform process,⁴²⁵ interviews with stakeholders are indicative that there has not been improvement in this area of reform. Interviews with officers from IMLU and KNCHR suggested that despite human rights abuses being one of those areas targeted by police reform, the actions of the police and investigations by the institutions involved in human rights violation still point accusing fingers at the police. For example, interview with IPOA key informant revealed that most of the complaints against police officers revolve around human rights violations,⁴²⁶ while interview with IMLU disclosed that 63% of torture perpetrated by state officers is perpetrated by the police.⁴²⁷ This figure had risen to 67% in August 2014.⁴²⁸

Focus group discussions revealed that though cases of human rights violations by the police are documented, most of them go unreported because members of the public do not know their rights when dealing with the police.⁴²⁹ Thus, the participants called for deliberate civic education of members of the public with the view to holding the police to account in cases of human rights violations.

IPOA (2014) singles out two police operations, namely; Usalama Watch and response to Mpeketoni attacks in Lamu during the year 2014. In both cases, there were violations of human rights. The report notes;

The NPS led 'Operation Usalama Watch' as observed by IPOA was characterized by poor coordination and supervision; poor record keeping in the holding stations; allegations of police bribery; congested and dirty detention facilities; gross violation of the 24 hours rule within which arraignment in court should be done for persons under arrest, violation of the rights of children to be

⁴²⁵ See Section 4.3.1

⁴²⁶ Interviews with K-Int2 and CSO7

⁴²⁷ Interview with CSO7

⁴²⁸ See; Mohamed (2014)

⁴²⁹ FGD1

detained separately from adults pursuant to Article 53 (1) (f) (ii) of the Constitution (IPOA, 2014, p.26).

Additionally, high profile murders of Muslim clerics believed to be promoting radicalisation of the youth continue to feed into public suspicion of human rights abuses in the police. Investigations into these murders are hardly resolved leading to suspicions of police complicity.⁴³⁰ Al Jazeera's Investigative Unit elaborated on these allegations in their investigative report 'Inside Kenya's death squad' and which implicated the National Intelligence Service (NIS) and police formations; Anti-Terrorism Police Unit and the Recce Unit of the General Service Unit (GSU). Their interview with alleged members of the 'squad' disclosed existence of an Elimination Programme sanctioned by the National Security Council.⁴³¹ The interviewees implicated Britain which they claimed was aware of the programme (Jepson, 2014). This development complicated the police reform process and raised questions about the international support to the police reform programme.

Quantitative responses to our questionnaire largely confirmed our primary qualitative and secondary data. The findings in Table 22 suggest that police reforms have not yielded any significant progress in terms of addressing human rights violations. Nearly 70% of our questionnaire respondents perceive that human rights abuses are still prevalent in the police service.

⁴³⁰ See; Mohamed (2014)

⁴³¹ NSC is Kenya's top security decision making organ chaired by the President.

Table 22: Public perceptions towards human rights abuses

Human rights abuse is still prevalent in the police service					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	10	11.6	11.8	11.8
	Agree	49	57.0	57.6	69.4
	Neutral	15	17.4	17.6	87.1
	Disagree	9	10.5	10.6	97.6
	Strongly disagree	2	2.3	2.4	100.0
	Total	85	98.8	100.0	
Missing	Non-response	1	1.2		
Total		86	100.0		

2. Perceptions towards police relations with members of the public

Police-public relation was a dominant theme in our in interviews and focus group discussions. Critical to this was the fact that respondents indicated that the relation between the police and the members of the public is not so cordial and therefore impacting negatively to policing. As will be examined in subsequent sections, this relationship is due mainly to mistrust between the police and the public.

Our interviews highlighted that poor police–public relation in Kenya is not a recent phenomenon. This according to an interviewee cannot be turned around in the short-run and will take long before progress is achieved.⁴³² To him, historical legacies of policing in Kenya are responsible for this relationship, where the police have reigned on the public at the whims of the executive. Surprisingly, a police officer blamed the police officers for this relationship and attributed it to the police soliciting bribes from unwilling members of the public.⁴³³

There was evidence, albeit limited, of commercial organisations involvement in community policing for example Nairobi Central Business Association (NCBA) in Nairobi and Kisumu against Crime (an association

⁴³² Interview with CSO2

⁴³³ Interview with a Kilimani based police officer

of private security companies, Kenya Association of Manufacturers, United Business Association, the Hindu Council, and the Aga Khan Council) in Kisumu.⁴³⁴ However, these are mostly limited to urban areas where there is police presence. In rural areas, the commercial organisations are absent and the police presence is limited thus need for integration of informal traditional security and justice mechanisms. Collaboration with non-governmental organisation is concentrated at the policy level at the national level with little impact at the local level though local CBO's offer great and untapped potential for community policing.⁴³⁵

Whilst there was unanimity in our focus group discussions about the not-so-cordial police-public relations, there were differences in terms of who is responsible for this relationship. Some participants blamed the police while others blamed the public. For example, a participant concurred with the view that the police are responsible for sour relationship with the public and was of the opinion that we have to equip our policemen with public relation skills.⁴³⁶ Women participants were more concerned about how the police relate with them as they are often scared to explain their problems to the police.⁴³⁷

When the questionnaire respondents were asked about police relations with members of the public, most agreed that the relationship is not cordial due to the police treating members of the public as second class citizens.⁴³⁸ They argued that members of the public do not provide evidence to the police for fear of being implicated. In quantitative terms, 74.4% of our questionnaire respondents indicated they do not agree that the police reform process has improved the relation between the police and members of the public (see Table 23 below).

⁴³⁴ Interview with K-Int6

⁴³⁵ See Section 4.3.1

⁴³⁶ FGD1

⁴³⁷ FGD2

⁴³⁸ QMP86

Table 23: Relationship with members of the public

There is strained relationship between police and members of the public					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	17	19.8	19.8	19.8
	Agree	47	54.7	54.7	74.4
	Neutral	10	11.6	11.6	86.0
	Disagree	11	12.8	12.8	98.8
	Strongly disagree	1	1.2	1.2	100.0
	Total	86	100.0	100.0	

Our primary quantitative data was also consistent with larger surveys on police-public relation. According to a survey by Usalama Reforms Forum, many members of the public still feel that the police are not committed to the welfare of the public, with only 23% of their survey respondents indicating that the police are committed to the welfare of the public (Usalama Reforms Forum, 2014b). From the foregoing, there is evidence that the post 2007 police reform in Kenya has not led to improved police-public relationship.

3. Public trust and confidence towards the police

As a precondition towards building confidence and trust, Waki Commission (2008) and GoK (2009) recommended change in police leadership. This was executed to demonstrate commitment towards the police reform process. However, it remained unclear how subsequent processes inspired confidence from members of the public.

Our interviews suggested perceptions towards the trust and confidence levels in the police are still low. In the words of a key informant, 'You see a police officer, and he does not elicit that trust in a Kenyan.'⁴³⁹ A number of activities including vetting were supposed to develop confidence and trust of the police amongst members of the public. However, the manner in which the exercise was conducted failed to win the support of the public.⁴⁴⁰ Despite little trust and confidence from the public, there was

⁴³⁹ Interview with CSO7

⁴⁴⁰ See Section 4.4.4

evidence of initiatives to improve police–public relationship. In Kisumu, an interviewee outlined a number of activities being undertaken by the public to develop trust including sports and cleaning up exercise: he noted;

I would say that we are really trying to first of all ensure that there is trust, there is mutual understanding, there is good connection between the public and the police. We are focusing on that. For the last two months I had a meeting called Kisumu Peace Festival. Kisumu Peace Festival which I am a member, we brought in the police to play football as part of the activity that we had.⁴⁴¹

Focus group discussions also pointed to lack of public trust in the police. This was due to several reasons key being lack of honesty on the part of the police.⁴⁴² Most participants argued that it was difficult to trust the police on allegations that police officers associate with criminals. A participant observed that ‘the police themselves are not honest-you report a problem then all over a sudden the police will turn around and tell the criminal that so and so reported’ (sic).⁴⁴³ The issue here is that the public is not confident enough in the police being protective of their sources of information. The police jeopardise the lives of informants. Other reasons given for the low confidence of the public in the police also included asking for bribes, unfair treatment of members of the public and also police involvement in crime.

Two respondents expressed their perceptions in ways that probably capture the dominant public perception about lack of confidence and trust in the police. One respondent said ‘it is not even there’⁴⁴⁴ while another observed that; ‘polisi sio mtu wa kuaminika’ (a policeman is not someone to be trusted).⁴⁴⁵ In our quantitative results in Table 24 below, only 12% of the respondents are of the opinion that the police reform process has resulted into trust and confidence compared to 77.1% that believe that the reforms have not led to increased trust and confidence.

⁴⁴¹ Interview with CSO3

⁴⁴² FGD1

⁴⁴³ FGD1

⁴⁴⁴ QMP57

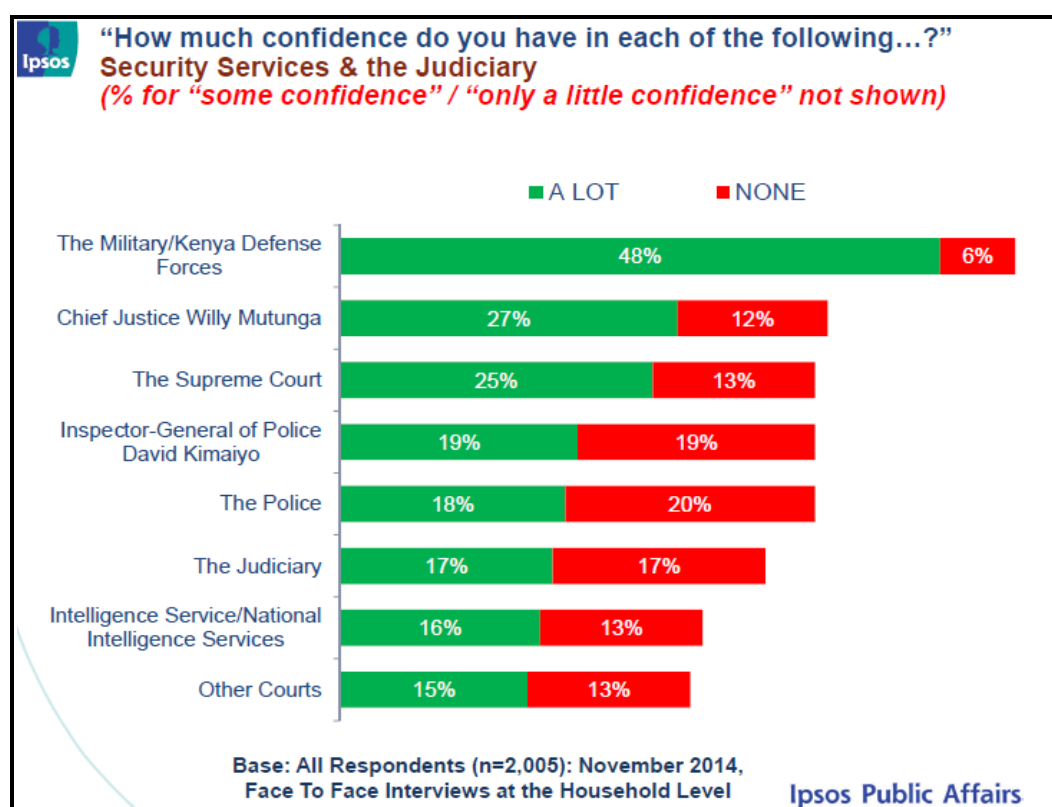
⁴⁴⁵ QMP85

Table 24: Public trust and confidence in the police

There is increased public trust and confidence in the police service					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	1	1.2	1.2	1.2
	Agree	9	10.5	10.8	12.0
	Neutral	9	10.5	10.8	22.9
	Disagree	44	51.2	53.0	75.9
	Strongly disagree	20	23.3	24.1	100.0
	Total	83	96.5	100.0	
Missing	Non-response	3	3.5		
Total		86	100.0		

These results compared positively to other studies. In the case of survey by IPSOS (2014), only 19% and 18% of their respondents had a lot of confidence in the Inspector General and the Police respectively (See Figure 7 below), while in the case of Usalama Reforms Forum (2014b), only 32% and 36% of the respondents had confidence in the police at the community level and believed the police are doing a good job respectively. The findings are also consistent with AfroBarometer survey in which a majority (63%) reported they did “Not at all/just a little” trust the police while 36% “somewhat trusted” the police (IJR, 2015).

Figure 7: Levels of confidence in the security services



4. Public sense of security compared to period before 2007 general elections

Whilst responses to different areas of public perception towards police image, accountability and partnership pointed towards the fact that the police reform process had achieved little in this area of reform, we will show in these sub-section findings in relation to whether the respondents were secure showed some positive progress.

There was a general feeling of safety amongst most of our participants in focus group discussions. Coming only a few months after the 2013 general elections, most participants we interviewed reported improved sense of security largely in comparison to the two electoral processes in 2007 and 2013 general elections respectively.

Qualitative responses to our questionnaire however yielded mixed results, though improved sense of security was more prominent. A respondent noted that even before post-election violence of 2007, he felt insecure and

argued that ‘insecurity has very little to do with post-election violence⁴⁴⁶ as he has always felt insecure due to crime in his neighbourhood, while another was categorical that ‘I don’t think anything has changed.’⁴⁴⁷ Another respondent however had a different view, arguing that things had changed due to the Kenyan cases in the ICC. ‘Ukifanya kitu mbaya (you do something wrong) there is another step.’⁴⁴⁸ Significant to this argument is the fact that the analysis of the 2013 general elections established that the Kenyan case in the ICC also contributed to the peace that existed during and after the 2013 elections.⁴⁴⁹ Yet a few had a more positive perception and one noted that ‘I feel more secure today than before and during the 2007 postelection violence’⁴⁵⁰

Quantitative responses to our questionnaire however suggested improved sense of security compared to during the post-election violence. As indicated in Table 25 below, about three quarters of our respondents (75.3%) are of the opinion that there is an improved sense of security with the on going reform process while only 11.7% disagreed with the statement.

Table 25: Public sense of security compared to period during the post-2007 election violence

I feel more secure today than during the post-election violence					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	6	7.0	7.1	7.1
	Agree	58	67.4	68.2	75.3
	Neutral	11	12.8	12.9	88.2
	Disagree	7	8.1	8.2	96.5
	Strongly disagree	3	3.5	3.5	100.0
	Total	85	98.8	100.0	
Missing	Non-response	1	1.2		
Total		86	100.0		

⁴⁴⁶ QMP57

⁴⁴⁷ QMP86

⁴⁴⁸ QMP84

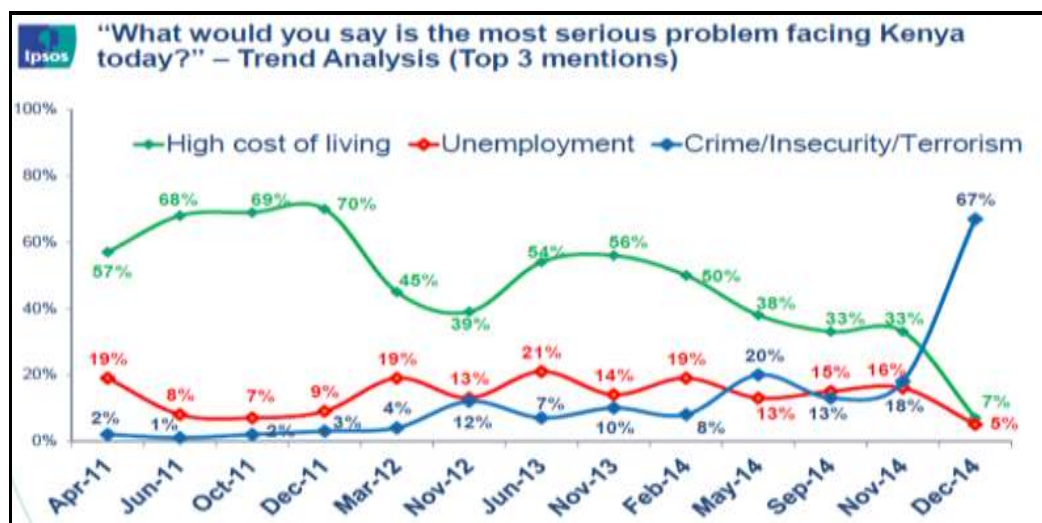
⁴⁴⁹ See; Cheeseman et al., (2014)

⁴⁵⁰ QMP54

The perception of improved sense of security in this item could be understood in the context of the electoral processes of 2007 and 2013 general elections. Whilst it is reasonable to argue that 2007 presented a real security and policing threat to the Kenyan population, the conduct of the 2013 general elections was fairly peaceful with insignificant incidents of violence (Cheeseman et al., 2014). The fact that data collection was done after a period of relatively peaceful elections could have contributed to this sense of security. The responses did not depart from the dominant narrative of peace during and after the 2013 elections. Thus, we could then argue that the response was mainly influenced by the existing political climate at the time.

IPSOS (2014) national survey perhaps emphasises our position regarding quantitative response to this item. In the formative stages of the implementation of post-2007 police reform, insecurity was not perceived as a serious challenge to the Kenyan population. The public did not perceive insecurity as a major problem until after November 2014. In June 2013, also coinciding with data collection, only 7% of the population considered insecurity as a serious challenge facing the county. This however shot to about 67% at the time of writing this study (see Figure 8 below).

Figure 8: Sense of insecurity: Trend analysis



Source: IPSOS (2014)

6.4.4. Operational Preparedness and Logistical Capacity

Chapter three discussions revealed that operational and logistical preparedness in practice formed the bulk of post-2007 police reform process at the expense of building accountability mechanisms. In fact, discourses on police reform by the Kenyan government to a large extent emphasize provision of logistical and tooling facilities as one of the areas in which the government has reformed the police. Capacity building (equipment, recruitment and the number of vehicles purchased for the police) remains dominant whenever police reform surfaces in public discourse. However, what these discourses fail to provide are evidence on whether these reform efforts have led to improved capacities and efficiency of the police to undertake their responsibility of providing security to members of the public.

This sub-section sought the opinion of members of the public based on four items within the rubric of operational preparedness and logistical capacities. The findings of this research reveal that reform in this area has not led to improved security and safety amongst the population based on four parameters discussed below.

1. Perceptions towards police responses to distress calls

Poor responses to distress calls from the public calls was one of the areas that the reform process sought to address. The government substantially increased the number of vehicles to the police and reactivated the hitherto moribund police rapid response initiative, popularly known as 999. Despite these efforts, the perception amongst our respondents was that these efforts had not led to better response to distress calls from the public.

Though our interview with a top police officer suggested there is improved response given improved allocation by the government and leasing of private vehicle for the police,⁴⁵¹ the benefit is not reflected at the station

⁴⁵¹ Interview with K-Int3

level. Interviews with some police officers attached to Kilimani and Kisumu police stations indicated that transport remains a major impediment in their response to public distress calls. This position was also confirmed by a key informant interview in Kisumu who reported that they sometimes fuel police vehicles in Kisumu.⁴⁵² Incidentally, since the interviewee runs a private security company in Kisumu, therefore the gesture is to the extent that it enables police to respond to calls from clients who can afford private security services.

Focus group discussions demonstrated the perceived helplessness of the ordinary citizen in cases of distress. Lack of vehicles was mentioned as a major problem. Where vehicles were present, there was sometimes lack of fuel. Perhaps the example given by a participant from a female-only focus group discussion who sought police help clarifies this point- 'They told me I produce money for petrol and I did not have money. Such things fail us and I gave up (sic).'⁴⁵³ Whilst lack of fuel could be a genuine problem affecting police response to public distress, there is a possibility some police officers take advantage not to respond to members of the public and use it as means to fleece the public.

Qualitative responses to our questionnaire did not show considerable progress in response towards distress call. A respondent reported that the police often ask the public to fuel the police car for them to attend to the public,⁴⁵⁴ while another respondent noted that sometimes the police respond late while other time they respond faster. When we probed further to establish circumstances for differential response to calls, socio economic issues identified in the focus group emerged. These included ones tribe, gender and economic status.

These findings are consistent with the findings by IPOA (2014). Whilst the report notes the role of mobility of the police in responding to distress calls, it reports that all six patrol bases visited did not have vehicles, or where vehicles were present there was no fuel and therefore officers were

⁴⁵² Interview with K-Int6

⁴⁵³ FGD2

⁴⁵⁴ QMP

'occasionally forced to fuel police vehicles using their own resources or from clients'. Police officers are therefore forced to seek ingenious methods of undertaking policing functions.

Quantitative responses to questionnaire largely confirmed the qualitative responses. As indicated in Table 26, majority of our respondents perceive that the police take too long to respond to distress calls by members of the public.

Table 26: Police response to distress call by the public

The police take too long to respond to distress call by the public					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	28	32.6	32.6	32.6
	Agree	48	55.8	55.8	88.4
	Neutral	4	4.7	4.7	93.0
	Disagree	5	5.8	5.8	98.8
	Strongly disagree	1	1.2	1.2	100.0
	Total	86	100.0	100.0	

A majority, strongly agree (32.6%) and Agree (55.8%) are of the opinion that the police take too long to respond to their distress calls. Notably, this finding still falls far below the target of 65% public satisfaction with police response rate set by the Ransley committee (GoK, 2009). This is not a new phenomenon in Kenya. Previously, slow lethargic response by the police had been attributed to lack of tooling facilities. However, whilst the government has purchased more vehicles and leased private vehicles to the police,⁴⁵⁵ most of these vehicles are not operational due to lack of fuel.

The slow pace with which the police responded to recent insecurity incidents further supports the findings from our primary data. Police unpreparedness to respond to Kapedo massacres in Turkana,⁴⁵⁶ Al-

⁴⁵⁵ See; Ombati (2014)

⁴⁵⁶ See; Mabatuk & Koskei (2014)

Shabaab attacks at Westgate, Lamu, and Mandera all point to a service that is reactive and with limited capacity to deter and investigate crime.⁴⁵⁷

2. Public perceptions on the rate of crime levels

The extent to which security sector reform is able to address security provision in an effective and efficient manner to both the state and its people are benchmarks in measuring the quality of security provision and include measures of perceived and actual crime levels as well as measure of the state of fundamental rights in a country (Schroeder, 2010). Thus, public perception of crime levels is important in determining the progress of public confidence in police reform.

Our qualitative interviewing drew mainly from the focus group discussions and qualitative components of our questionnaire. The focus group discussion revealed that crime levels are still high in Kisumu, which was our location for the discussions. The participants mainly attributed the increased crime levels to high rate of unemployment of the youth in the region.⁴⁵⁸ Qualitative responses also showed increased crime levels 'because of no proper security'⁴⁵⁹ especially during the month of December.⁴⁶⁰

Beyond our primary qualitative data, conflicting figures exists on rate of crime in Kenya. According to Usalama Reform Forum, the rate of crime increased from 245,808 in 2008 to 432,394 by December 2013, an increase of about 75% during the period (Usalama Reforms Forum, 2014c). This is however markedly different from the Annual Crime Report released by the National Police Service in December 2013, which indicated that overall crime rate had gone down by 8% with a total of 66,188 cases reported compared to 72, 091 in the year 2012. This brings into question the reliability of the police data. Usalama Report notes that National Police Service crime data is underreported with only less than

⁴⁵⁷ See; Khalil & Zeuthen (2014)

⁴⁵⁸ FGD1,2 and 3

⁴⁵⁹ QMP84

⁴⁶⁰ QMP85

40% of crime victims reporting to the police and estimate that the true figure of crime could be roughly five times the level reported by the police (Usalama Reforms Forum, 2014c). This is also consistent with IPSOS (2014) which reported that 55% of their respondents who have been victims of crime did not report to the police, while only 42% reported.

In our primary quantitative data, nearly 70% of the respondents perceived that the rate of crime is still high in their neighbourhood (see Table 27). This finding is more or less consistent with Usalama Reforms Forum (2014c) report on crime levels in Kenya and below the Ransley committee set target to reduce the crime rate from 143 per 100,000 people in 2009 to 80 per 100,000 people by 2013. Usalama Reforms Forum (2014c) reported that there has been no change in crime detection framework over the last 70 years. The police reform process has not led to novel ideas for the police to detect crime beforehand.

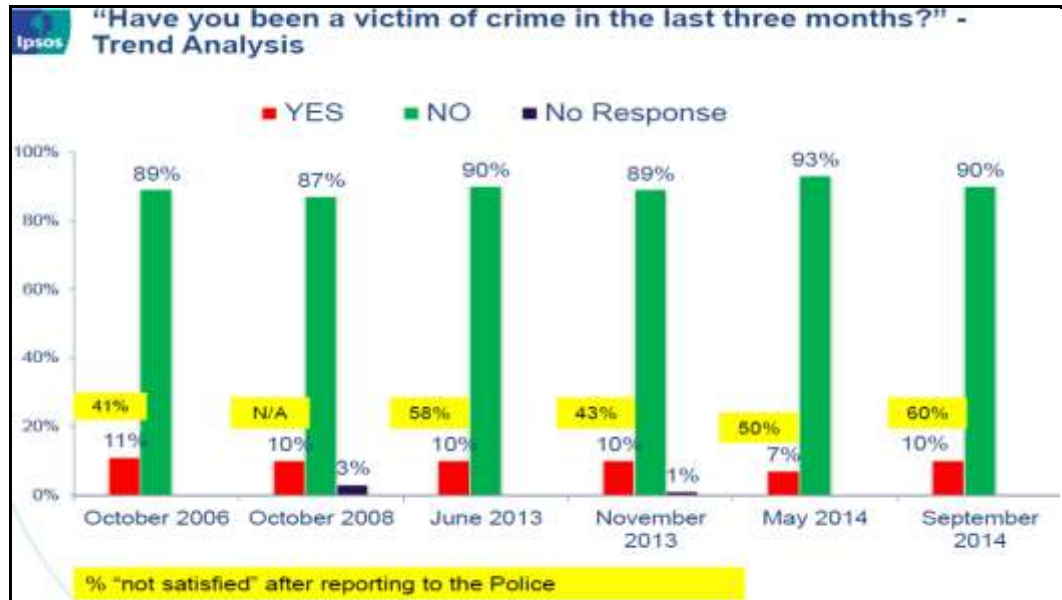
Table 27: Perceptions towards rate of crime

The rate of crime still remains high in my neighbourhood					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	8	9.3	9.6	9.6
	Agree	50	58.1	60.2	69.9
	Neutral	10	11.6	12.0	81.9
	Disagree	14	16.3	16.9	98.8
	Strongly disagree	1	1.2	1.2	100.0
	Total	83	96.5	100.0	
Missing	Non-response	3	3.5		
Total		86	100.0		

The above finding is also consistent with IPSOS (2014) which suggests an increasing trend in the rate of crime. As shown on Figure 9 below, there has not been a reduction in the percentage of number of people who have been victims of crime despite the on going police reform process, with 89% reporting having been victims in 2006 and 90% in September 2014 when one would have expected a reduction due to the reform process. What is more worrying is the fact that there is an

increase in the level of dissatisfaction amongst those who report to the police, from 43% in November 2013 to 60% in September 2014.

Figure 9: Rate of crime: Trend analysis



Source: IPSOS (2014, p.56)

3. Perceptions towards police presence in enhancing peace and stability

This item sought to establish whether the presence of the police in communities and increased police patrols in the neighbourhood had contributed to peace and stability. Interviews in Kisumu revealed that though the relationship between the police and the public had deteriorated to the lowest ebb during the 2007 post-election violence, attempts at improving police-public partnerships had seen the police gradually renewing relationship with the community.⁴⁶¹ Though still at a formative stage, this development has had the effect of enhancing peace and stability amongst the residents of Obunga Slum in Kisumu. Our focus group discussions confirmed our interviewees' position. The participants noted that the presence of police deters would-be criminals. However rate of crime still remain high though there was potential for this coming down due to police presence.

⁴⁶¹ Interview with CSO4

Qualitative responses also pointed to improved sense of security through police presence and patrols. Majority of the respondents felt that in the presence of the police, ‘no one will take law into their hands.’⁴⁶² The police presence ‘instils fear which discourages people from engaging in crime.’⁴⁶³ However, there was also a more radical perception. One respondent argued that he does not think that peace and stability are a function of the presence of the police, but a function of the absence of factors that instigate insecurity and instability; ‘I don’t think it’s the police, the instigating factors are not there.’⁴⁶⁴ This sentiment points to the existence of structural issues which only need a trigger like the post-election violence and the police will not be able to manage.

Whilst our primary sources of data emphasised that the presence of police has enhanced peace and stability, secondary sources presented conflicting results. IPOA (2014) noted that the presence of the police in cases of demonstrations led to violence and chaos. Of the four incidents monitored by IPOA, those that did not have police presence, that is, demonstrations by the Solidarity Movement for Society and Rights Protection & Promotion in Nairobi and that of civil society groups under the banner of Fuata Sheria in Nairobi County were peaceful compared to Operation Usalama Watch’ in April 2014; and Police response to Mpeketoni attacks in Lamu County in June 2014. However, we consider these events isolated cases that do not justify conclusions that police presence in demonstrations leads to violence.

Our quantitative findings from the questionnaire (see Table 28) showed that a slight majority of our respondents (59.5%) believes that the presence of the police has greatly enhanced peace and security. Favourable perceptions about police presence in quantitative response are consistent with the public perception about police presence in survey by IPSOS (2014). When the respondents were asked, “What do you think can/should be done to improve security within your locality,” a majority

⁴⁶² QMP84

⁴⁶³ QMP66

⁴⁶⁴ QMP54

(52%) of the respondents noted that the government needed to increase police presence.

A sizeable proportion (22.1%) of our questionnaire respondents was however not sure about this response. Probed further, most of those who indicated they were not sure attributed their response to the fact that they hardly see the police in their neighbourhood and are therefore not in a position to explicitly determine if their presence or absence enhanced security and stability. Perhaps this finding relates more to Usalama Reforms Forum (2014b) which established that only 26% of respondents expressed that they were satisfied with the number of police officer and police patrols.

Table 28: Presence of police and their role in peace and security

The presence of police has greatly enhanced peace and stability					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	5	5.8	6.0	6.0
	Agree	45	52.3	53.6	59.5
	Neutral	19	22.1	22.6	82.1
	Disagree	10	11.6	11.9	94.0
	Strongly disagree	5	5.8	6.0	100.0
	Total	84	97.7	100.0	
Missing	Non-response	2	2.3		
Total		86	100.0		

4. Public perception towards offences brought to justice

One of the major challenges in Kenya's criminal justice system is judicial gridlock.⁴⁶⁵ Judicial gridlock as used in this context refers to an unprecedented increase in the number of cases that undermines the ability of the judicial system to effectively administer justice. The long bureaucracy within the system and shoddy police investigations amongst other things are cited as being responsible for the gridlock.⁴⁶⁶

⁴⁶⁵ For elaborate discussion on judicial gridlock, see Neubauer (1986)

⁴⁶⁶ Interview with CSO2

Reforms in the police and the judiciary were meant to address this problem. The Office of the Director of Public Prosecutions was strengthened, the Criminal Intelligence Unit established in the police and more officers trained in public prosecution alongside deliberate effort to fast-tracking of cases pending in courts. Has there been progress in addressing the gridlock and to what extent has the progress contributed to overall better performance in the criminal justice system? This area of questioning sought to explore perceptions towards the entire criminal justice system for which police exist and operate.

Most interviewees argued that the police act as the key to the entire criminal justice system. Police act as the gate-keepers in a criminal justice system.⁴⁶⁷ People even say that “afadhali tusiwe na koti, lakini” (we had better not have courts, but) wherever we go to sleep we know we are safe and secure.⁴⁶⁸ Thus, higher number of offences brought to justice would be indicative of the progress made not only on the police reform but also within the entire criminal justice system if the holistic approach to SSR is to hold.

Despite reforms targeting the entire criminal justice system, the judicial gridlock is yet to be unlocked. Claims of delayed cases still abound and the police continue to be accused of deliberately compromising investigations. A human rights activist observed;

I have had a case which is still pending where a 60 year old man raped a class six. I have followed the case for one year. You follow “mpaka” (until) if you don’t have much strength in your heart, you can die before having justice because of the system.⁴⁶⁹

A prominent human rights lawyer in Nairobi noted, ‘If you look at police files and outcome, if you study some of the files from the Director of Public Prosecution, there is a bottom line, case cannot proceed because

⁴⁶⁷ Interview with CSO2

⁴⁶⁸ Interview with K-Int1

⁴⁶⁹ Interview with CSO6

of shoddy investigation’.⁴⁷⁰ In this instance too, the interviewee blames the delayed cases on the poor police investigations.

Overall, most of our interviewees perceived that the judiciary had done well compared to other sectors within the entire criminal justice system in relation to progress of reforms. The relative progress of the judiciary compared to the police was attributed to the fact that the judiciary is an independent arm of the government unlike the police which directly falls under the executive. The judiciary enjoys independence, while what goes on in the police attracts attention of both the executive and parliament hence prone to interference.⁴⁷¹

Similar findings also emerged from our focus group discussions and the qualitative responses to our questionnaires. The participants perceived that the though judicial system has made progress in reforms, there is still a backlog of cases.⁴⁷² A questionnaire respondent estimated that only 20% or below of offences are brought to justice.⁴⁷³ Most of the cases are manipulated in favour of those who can afford to buy their way out. ‘If you are wealthy they will consider your wealth. A rich man ‘akifika’ (arrives in) court ‘atawatengeneza na pesa’ (bribes his way out.)⁴⁷⁴ Whilst some of these comments could not be substantiated by our respondents, they are however indicative of the perceptions of the respondents towards what goes in administering justice to the Kenyan population. Compared to other secondary sources, these findings reflect similar views expressed by the Kenyan public in larger surveys. An example in this case is in Figure 7 (Page 272) which established low levels of public confidence in the institutions within the criminal justice system.

Quantitative responses to questionnaires however established a near balanced perception to the respondents’ perception of offences brought justice. As indicated in Table 29 below, there was a nearly equal

⁴⁷⁰ Interview with CSO2

⁴⁷¹ Interview with K-Int1

⁴⁷² FGD1

⁴⁷³ QMP57

⁴⁷⁴ QMP86.

distribution between those who agreed (Strongly agree 16.7%, agree 29.5%) and those who disagreed (disagreed 30.8%, agree 12.8%) that the police reform process had led to an increase of offences brought to justice.

Table 29: Perceptions towards offences brought to justice

The proportion of offences brought to justice remains high					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	13	15.1	16.7	16.7
	Agree	23	26.7	29.5	46.2
	Neutral	8	9.3	10.3	56.4
	Disagree	24	27.9	30.8	87.2
	Strongly disagree	10	11.6	12.8	100.0
	Total	78	90.7	100.0	
Missing	Non-response	8	9.3		
Total		86	100.0		

The findings above could have been due to the fact that this item did not just focus on the police alone but extended to the entire criminal justice system. It however opens up avenue for the need for a larger comparative study of both qualitative and quantitative responses.

6.5 Overall Perception Towards Progress in Police Reforms

Earlier sections of this chapter established that majority of our respondents were aware of the ongoing police reform and demonstrated some level of competence on security and safety issues they considered priority in their neighborhood. It also established that there has been considerable progress in the implementation of police reform process. In fact, studies for example Usalama Reforms Forum (2014b) record about 60% progress in the implementation of post-2007 police reform process. However, this progress has not commensurately translated into improved policing and community safety amongst the local populations. This finding is significant as it reiterates findings of little progress in police reform from national surveys (IPSOS, 2014, IPOA, 2014) and other forms of survey including AfroBarometer surveys (IDS, 2015, IJR, 2015).

There were varying degrees in perceptions towards progress in each of the four areas of post-2007 police reform. The varying degrees in each reform area reflected the course and emphasis in the implementation of the police reform process has taken since 2009. Though all areas showed unfavourable perceptions, the perceptions towards operational preparedness suggests that the respondents perceive more progress in this area compared to others. This outcome largely reflects the trajectory police reform in Kenya has taken.

First, the political discourse around police reform has to a large extent centered on modernizing the police including; purchase of vehicles and equipment. This narrative to a large extent forms the Jubilee Alliance response to critics over its handling of (in)security in Kenya. There is however a contradiction to the effect that despite intense government campaign to make visible police modernization and the respondents noting progress in operational preparedness, the police have in most cases failed to address insecurity.

Secondly, the positive public perception that the presence of police is likely to improve peace and security in the locality also seemed to be critical (see Table 28) to perceptions about operational preparedness. These two factors may have had impacts on public perceptions and so making perception towards operational preparedness to be seen as fairly responsive. This translated to about 35% of questionnaire respondents viewing this area more responsive.

Perceptions regarding police image and accountability showed that the respondents did not consider police reform to have improved considerably. We asked our respondents to close their eyes and assumed they walked in a police station. The imagery created was unfortunate for police reform process in which 60% implementation has been undertaken. A description by one respondent summarizes this;

I see a person; the kind of language he speaks; a police officer looks at you and concludes this is a bad person. Their kind of

language; they lack manners; who are you, where are you from, what do you want? They are dressed in a blue kind of a threatening top, most of the policemen you would never like to associate with given their trousers (sic).⁴⁷⁵

In short, the image of the police is not very encouraging amongst the respondents even though there was an improvement in the sense of security as at the time of data collection.⁴⁷⁶ The sense of security has however since then fluctuated due to different attacks on the Kenyan populations.⁴⁷⁷ Our questionnaire results established that in overall, only 27.9% of our respondents perceived this area of reform to be responsive.

In terms of institutional, policy and legal reforms, key institutions and structures have been established at the national level and are yet to be decentralized. Notable in this area was the perception that oversight has improved through police reform (see Table 14). This suggested the growing confidence amongst the public towards the strengthening of the public oversight mechanisms. However, this did not translate to overall positive perception in institutional, policy and legal reforms as the perception in this area was overshadowed by unfavourable perceptions within this area of reform. Our questionnaire respondents indicated that only 17.4 % consider this area to be responsive.

Perception towards professionalism was the area least considered to be responding to policing and safety needs. Most respondents considered police unreliable, ethnicised and still opaque despite accountability mechanisms having been established. This translated into only 14% of respondents considering this area to be responsive.

Significantly, the results show that in overall, the public perceive the entire reform process as not being responsive to their needs. Overall, our questionnaire responses indicate that only 19.8% of respondents perceive the entire reform process to be responsive while the remaining 80.2%

⁴⁷⁵ FGD1.

⁴⁷⁶ See; Table 25.

⁴⁷⁷ See; Figure 8.

consider the entire process as not being responsive as seen in Table 30 below.

Table 30: Overall perception towards responsiveness of police reform process

Reform area	Responsive %	Not Responsive %
Operational preparedness, tooling and logistical capacity	34.9	65.1
Image, accountability and partnerships	27.9	72.1
Institutional, policy and legal reforms	17.4	82.6
Professionalism, terms and conditions of work	14	86.0
Overall perceptions	19.8	80.2

The findings from our quantitative data about perception towards responsiveness of overall police reform is more or less similar to Usalama Reforms Forum (2014b) which established that though 60% of police reform priorities had been implemented as at December 2014, only 15% have had some significant impact on the communities, a difference of about only 5% with our quantitative questionnaire results.

To further establish how our overall findings were manifest across socio economic variables, we cross-tabulated perceptions towards overall responsiveness of police reforms against some socio-economic characteristics. The findings demonstrated consistent results. Respondents based in Kisumu considered police reform process to be less responsive with 82.5% indicating not responsive, and 17.5% responsive, compared to Nairobi's 78.3% not responsive and 21.7% responsive. This finding was also replicated in the focus group discussions with the participants giving generally negative feedback about the ability of the police reform to address their security needs.⁴⁷⁸ Kisumu is predominantly an opposition zone and is in most cases diametrically opposed to government initiatives.

In terms of gender, more females (82.9%) perceive police reform process not to be responsive, compared to males (78.4%). Our discussion with women revealed perceptions that police reform did not take into account

⁴⁷⁸ FGD1,2 and 3.

special needs of women.⁴⁷⁹ Provision of security and justice is skewed in favour of men and the powerful while the women, particularly the rural women, continue to be disadvantaged. Women participants in the FGD reported that the society expects them to seek permission from men or the local clan elder before reporting to the police.⁴⁸⁰ In such instances, the women are usually prevailed upon by the society not to pursue their cases and hence their issues remain unresolved. The police reform process does not have the mechanism for addressing the production of security for the women at the informal spaces thus explaining the unfavourable perception of women towards the responsiveness of the police reform process.

In terms of age, there appears to be a positive association between age and perception towards the responsiveness of police reform in our questionnaire responses. There was a near normal distribution amongst the youth, 18-24, with 57.1% and 42.9% recording not responsive and responsive respectively. This seemed proportional to other age categories with the middle aged 25-34 years and 35 and above posting that the reforms are not responsive at 83.3% and 88.9% respectively. This is shown in Table 31 below.

Table 31: Overall perception towards responsiveness of police reform by age

Crosstab				
% within Respondents' age				
		Overall perception recoded		Total
		Not responsive	Responsive	
Respondents' age	18-24 years	57.1%	42.9%	100.0%
	25-34 years	83.3%	16.7%	100.0%
	35 and above	88.9%	11.1%	100.0%
Total		80.2%	19.8%	100.0%

The findings regarding the overall perception towards progress in police reform process is not only unique to this thesis. These have been documented in other surveys. However, these were not in-depth and only focused on specific aspects of police reform in Kenya. For example, Kabia (2013) and (Chtalu, 2014) focused on perceptions of police officers to

⁴⁷⁹ FGD3.

⁴⁸⁰ FGD2.

police reforms and challenges of police reform respectively. The former established that the police perceived that the reform process had not adequately addressed their concerns, while the latter argued that the reform process was yet to address public concerns due to inherent challenges in the implementation. Karanja (2013) established that based on an average of 2.04, the perception index of the public on police is far too low' and that the police reform process was slow. While Kenya National Reconciliation Process established that just before the 2013 general elections, about 47% of Kenyans did not have confidence in the police (South Consulting, 2013, p.37) while Amnesty International (2013) summarized Kenya's police reform process just before the 2013 elections as 'as a drop in the ocean'. These findings obviously provide harsh judgment in perception terms to the police reform process in Kenya and may need to be considered by the policy makers.

6.6 Conclusion

This chapter has explored the responsiveness of Kenya's police reform process to policing and community safety needs. The findings have revealed that though there was convergence of priorities between the government and public of what police reform process intended to achieve, divergences emerged in the implementation largely due to the state-building approach adopted by the government. The implementation of police reform excluded a critical mass of security and justice providers who represent about 80% of provision of security.⁴⁸¹ The implementation strategy not only alienated non-state providers of security but also ignored the contribution of the local populations who were to benefit from community policing.

To broaden the scope of public participation in the police reform process, we propose a multi-layered policing that integrates three layers namely commercial, non-governmental organisations and informal sector security and justice providers in the SSR process. Multi-layered community policing offers both hope and potential challenges for community policing

⁴⁸¹ See Section 6.3.1.

in Kenya. In the words of Luckham and Kirk (2013), this form of hybridity 'brings together a supply-side approach to the determination of security by a variety of actors, with the demand side emphasis on inclusive security based upon the agency of end users' (Luckham and Kirk, 2013, p.10). Through this framework, the end users would be able to voice their displeasure while at the same time will provide opportunity to identify networks that threaten local security.

Two incidents explain the dividends likely to be derived in emphasising the local systems. First, on November 2, 2014, Pokot bandits attacked a contingent of 22 police officers in Kapedo⁴⁸² and secondly the Al-Shabaab attack that killed 28 passengers travelling to Nairobi from Mandera on November 22, 2014.⁴⁸³ Although the president visited Kapedo and gave an ultimatum to the locals to surrender all the firearms from the slain police officers and deployed KDF to conduct forced disarmament, most of the guns were recovered through the initiatives of the local clan elders and not through the military operation. In the case of Mandera bus attack, the local governor was reported to have received intelligence from the local community that Al-Shabaab insurgent group from Somalia had heightened its activities and was planning an attack only three days to the attack. This intelligence was reportedly shared with the local police who allegedly dismissed the governor's comments as politics.⁴⁸⁴ The attack resulted into low public confidence in the police thus precipitating calls for resignation of the Inspector General.

The two incidents illustrate state response to local security needs. First, the response of the security agencies including the police was lethargic and lacking in proactive policing. Secondly, the presence of the state agencies was episodic and destructive thus further heightening tensions between the locals and the state security agencies. In Kapedo for instance, there were reports of human rights violations and the local leadership was at loggerheads with the national government. In the eyes

⁴⁸² See; Mabatuk & Koskei (2014).

⁴⁸³ See; Otsialo & Hajir (2014).

⁴⁸⁴ See; Bosire (2014).

of the locals, KDF and the police remain illegitimate. A Pokot clan elder was quoted saying 'we will never work with the police.'⁴⁸⁵ While in the case of Mandera the locals considered the ability of the government to provide security in doubt even after the government claimed that it had killed the Al-Shabaab militants who had killed the civilians.

Thus, the role of the local mechanisms cannot be ignored, either in the form of security intelligence or in terms of mobilising the locals to support government initiatives. The local leadership is more trusted than the state system and more resilient in territories that remain state ungoverned and fulfil decentralisation of decision making that informal Kenya's governance structure. They are also adaptable to the security needs of the locals that are incomprehensible by the state agents. In short, the reform success of state-building is subject to the willingness and cooperation of non-state and informal actors and networks (Podder, 2014).

⁴⁸⁵ See; Wafula (2014).

CHAPTER SEVEN

CONCLUSION AND CONTRIBUTIONS

7.1 Introduction

This chapter presents the findings and conclusions in relation to the overall research questions, and also highlights the thesis' contribution to knowledge. It links the substantive research chapters with methodology (Chapter one) and the wider literature on security sector reform (Chapter two). It begins by presenting the key findings and conclusions, drawing from the analysis and evidence presented in the previous chapters. It then proceeds to discuss the significance and contributions of these findings in the wider debates about SSR, and particularly police reform process in transitional developing countries, within the context of the three academic literatures stated in chapter one and reviewed in chapter two. The following section presents some of its priorities for future research.

7.2 Findings and Conclusions Relating to the Police Reform Process in Kenya

The overall aim of this research was to examine the security sector reform processes in countries emerging from crises, with a particular focus on the police reform process in Kenya after the 2007 post-election violence. The primary research question guiding this study was; 'How have security sector reforms, particularly police reforms, in Kenya developed since 2007 and how, and to what extent, have they been shaped by Kenya's wider political transitions and SSR process during this period?'

To answer the question, the study begun by positing that Kenya's police reform process faces some very difficult challenges due to the complex nature of the object and context of study. These complexities and pluralities have been examined thus contributing to the overall achievement of the intended objective; that of deepening our understanding of security sector reform process in societies emerging

from crisis within the context of Kenya's police reform after the 2007/8 post-election violence.

The research revealed that the police reform process in Kenya is a complex one and faces some serious challenges as posited in Section 1.1. We argue that though the construction of police reform agenda was done through a consultative process, interests of the political elite and implementation strategy narrowed the scope of reform dividends to local policing and security needs of ordinary Kenyans. In this section, we present this argument in relation to agenda setting for police reform, the implementation process and the perception/impacts of police reform process to local communities.

7.2.1 Agenda Setting for Police Reform

Agenda setting process for police reform related to the theme of police reform priorities and linked with first secondary research question we sought to examine. After the post-election violence of 2007/08, wide consensus for police reform provided a fertile ground to set the reform agenda. Thus, though tragic, the post-election violence of 2007 opened a window of opportunity (Kingdon, 2002) for police reform. It helped set the agenda for wider political and institutional reforms. Police reform was prioritized though there were a number of competing priorities including electoral reforms, judicial reform, land reforms and above all constitutional reforms.

Though there was consensus (whether this consensus was genuine across the board remained unclear) to reform the police, there were contestations on how the process would proceed. The contestations were so intense that observers had started casting aspersions on the commitments to setting of the reform agenda.⁴⁸⁶ These were due to the vested political interests with regards to control of the process. These contestations were however resolved through the mechanisms set by the Kenya National Dialogue Reconciliation Process. Subsequent reform

⁴⁸⁶ See; Kanyinga (2009).

processes, including police reform derived from the agenda developed by the KNDRP.

The KNDR prioritised human security component as opposed to measures to address long-term structural issues that had significantly led to the violence, at least in the short run. This prioritisation was reflected in the way the KNDR agendas for discussion were structured. Agendas 1 and 2 sought to restore individual liberties and address humanitarian crisis respectively. Agenda 3 sought to establish a suitable political atmosphere through which short term liberal guarantees would be assured and long-term structural issues, including police reform, would be addressed in agenda 4. In our view, this prioritisation significantly helped in avoiding the pitfalls of reforms witnessed in the period preceding the year 2008.

The post-2008 police reform agenda was therefore founded through a structured KNDR process and also involved wide social negotiations including the international community and the national stakeholders.⁴⁸⁷ The reform priorities were crystallized by the Philip Ransley Committee (GoK, 2009) which set the proper agenda for reform. The committee involved public participation by asking the Kenyan polity what kind of policing they needed. The committee then narrowed to four key reform areas that we have investigated in this thesis.⁴⁸⁸ To cushion the reform agenda from interference, it was anchored in law, including the 2010 Constitution (KCLR, 2010) and various pieces of legislation including (KCLR, 2011a, KCLR, 2011b).

Control of the police reform process and the police service was a core concern during the agenda setting process for the national police reform. Each side of the political divide, ODM and PNU, sought dominance.⁴⁸⁹ Compromises were made with the political elites ceding ground for the process to move forward. However, as demonstrated by our findings relating to the implementation process, which we discuss shortly, the

⁴⁸⁷ See Chapter 3.

⁴⁸⁸ See; GoK (2009).

⁴⁸⁹ See Chapter 5.

priorities of the political elite may not have significantly changed after all. We conclude that whilst existing literature suggests linkage between agenda-setting and reform implementation, the Kenyan case demonstrates that this linkage is quite complex. The implementation processes usually do not follow a definite pattern envisaged in the agenda setting. This we attribute to two things, namely the intervening variables that may not have been considered during the agenda setting process and the unpredictable behaviour of the political elite.⁴⁹⁰

Our review of literature on agenda setting for police reform in Kenya revealed that though studies have examined agenda setting processes under the Kenya National Dialogue and Reconciliation Process, these relate to wider implementation of agenda 4 items.⁴⁹¹ Little effort is made to explore how the agenda for police reform was developed; neither do the studies examine how the agenda that emerged after the 2007 post-election violence impacted on police reform. This research therefore is the first of its kind to examine agenda setting for police reform in Kenya and relate how this impacted on the implementation process.

7.2.2 The Implementation Process

In order to understand the post 2008 police reform priorities, we first explored the state of security and particularly the nexus between the police and the political elite in Kenya before 2007/8. This helped us determine the police reform priorities before 2007 and also formed the basis of assessing post 2007/08 priorities, thus helping us justify why Kenya needed police reform.

To a large extent our findings support the arguments that piecemeal constitutional amendments since independence made the police more repressive as the ruling regime used the force to quell dissent.⁴⁹² Whilst the independence constitution envisaged a more liberal structure of governance, the constitutional amendments led to centralization of power

⁴⁹⁰ This argument is developed in the subsequent sub-sections of Section 7.2.

⁴⁹¹ See for instance, Brown (2011); Tsuda (2013).

⁴⁹² See for instance, Adar & Munyae (2001).

in the presidency.⁴⁹³ This meant that the president controlled the entire security system, including the police, from the centre to the peripheries. Policing was geared toward protecting the interests of the regime, with Kenyatta, Moi and Kibaki regimes invariably using the police for their political survival.

The year 2003 provided perhaps the best opportunity to break with the negative past in the police and the entire security sector. Through GJLOS, the Administration Police embarked on a modernization programme with the support of the presidency (Onsarigo, 2009), while the Kenya Police embarked on developing a five-year strategic plan (Kenya Police, 2004). Community policing also formed part of the police reform component (Ruteere and Pommerolle, 2003). These reform processes included the ideals of police reforms; efficient and effective service delivery all set within a democratic oversight.⁴⁹⁴ However, these reform initiatives lacked cohesive implementation strategy and therefore failed to make impact on policing. The reforms did not address structural problems in the both the regular and administration police. The reforms were externally driven and lost momentum after donor funding was withdrawn.

The period leading to the 2007 general elections was still characterised by strong executive influence and high politicization of the security forces particularly the police. This was believed to have significantly contributed to the post-election violence (Kriegler, 2008, Waki Commission, 2008). It is the vilification of the police by the two commissions of inquiry that stimulated impetus for police reform.

Under the post-2008 implementation process, we examined how the reform process was managed including response to various challenges and deficiencies. With regard to prioritisation, the strategy to address human security and subsequent establishment of suitable political context for reform though promising, underrated the fluid and complex nature of the Kenyan politics, a factor which was also emphasised by Cheeseman;

⁴⁹³ See for instance; Anderson (2005); Gimode (2007).

⁴⁹⁴ See; OECD DAC (2007).

'Kenya's politics at the top is remarkably fluid, perhaps more fluid than any other country in the world and could change any time.'⁴⁹⁵ The prioritisation strategy seemed to overlook the elite behaviour - that of shifting positions on the reform process, thus leading to delays in the implementation.

The implementation was mainly state-driven at macro and meso levels. Macro issues considered pre-requisites for successful police reform process still remained the dominant issues around which police reform discourse revolved at all three levels of analysis. The contestations witnessed in the agenda setting process still plagued the implementation. The will to reform was in doubt as demonstrated by the behaviour of the political elite in control of the process, funding was still inadequate though there was increased budget to the police and the public remained unmotivated and the competence of police leadership to deliver the reform was in doubt.

At the meso level, competition amongst the institutions responsible for police reform resulted into a disjointed implementation approach. For example, though there were wrangles between the Office of the Inspector General and the NPSC, the IPOA had more problems with the two institutions due to what it perceived as 'incompetent leadership.' The impacts of these differences were two-fold. First, there was loss of confidence in the National Police Service amongst the Kenyan public and amongst the police. Secondly there were delays in the reform process as the institutions fought their battles in court and in the media.

For the purposes of space in the police reform process, various stakeholders adopted different strategies to have their way. The courts provided a platform through which some reform processes were either challenged or reviewed. The focus group discussants believed that this research would shed light and help the government review its reform strategy to make reform responsive to their needs. In short, there were

⁴⁹⁵ Cheeseman during a public lecture at the University of Bradford on 3rd December 2014. Also see; Cheeseman et al., (2014).

numerous ways through which stakeholders' responded to challenges and deficiencies of reform and this research is one of those many avenues to address some of the challenges by making recommendations to the police reform policy community.

At the micro level, some reform processes were strong in priority statements but did not yield the intended impact within the police service. For example, the merger between the Administration Police and the Kenya Police only existed on paper and strong in statement. Yet, the two services under the Inspector General worked at cross purposes. They were more divided. There was no deliberate attempt to strike a common ground on the two police services that had different policing philosophies and trajectories. This finding is consistent with Furuzawa (2011) who argued that merger would be difficult due to the different histories of the two police services. The presence of the Kenya police was historically mainly felt in the urban areas, the railway routes and areas dominated by white settlers, while the administration police focused on the rural areas.⁴⁹⁶ The merger of the two services was even more complicated by the fact that there existed parallel leadership structures at the county level; one under the County Policing Commanders, another under the OCPDs and the other under County Administration Police Commander. With this arrangement, exercising accountability of the police at the county level was difficult and delivery of service to the local populations was poor.

In the vetting of police, resistance to the process by the police and the negative start of the process meant that it did not achieve its intended objective, but nevertheless was a positive step towards professionalizing the police. Public opinion suggested that the manner in which the process was undertaken did not satisfy the public expectation and some police officers whose human rights abuse records were known to the public were not removed from the service.

⁴⁹⁶ For elaborate discussions on the trajectories of the two services, see Furuzawa (2011).

Overall, the findings regarding police reform implementation suggest that after about five years, a solid implementation strategy was yet to form, suggesting that the long-term planning that define security sector reform implementation process of countries emerging from crisis. Despite international support at the national level, there were no experts to translate national police reform priorities into tangible results at the county level.

7.2.3 Power-Sharing

Kenya's power-sharing after the post-election violence of 2007/08 provided the political context of the police reform process under examination. This related to the second thematic concern of this study. Our analysis focused on the politics of power-sharing and police reform in the grandcoalition and also the devolution politics and police reforms.

In our analysis, we argue that the politics of grand-coalition invariably impacted on the police reform process. On the one hand, we support the thesis that despite the contested nature of Kenya's grand-coalition, it was worth the effort. It formed the 'basis for undertaking far reaching reforms' (Kanyinga, 2009, p.12) including police reforms. The grand-coalition government established in 2008 was instrumental in setting the reform agenda. It was a watershed. It helped re-ignite the reform process that had stalled or was otherwise cosmetic prior to the post-election violence.

On the other hand, the politics of grand coalition, characterised by elite competition, slowed down the reform process. After existence for three years, the promulgation of the new constitution remained the greatest achievement of the grand coalition government though very little had been done on police reforms (Brown, 2011). Even as late as 2013 just before the elections, the police reform process was considered 'a drop in the ocean' (Amnesty International, 2013), due to the competition for power in the grand coalition. In fact, a cloud of uncertainty hung ahead of the 2013 elections since police reform had been inadequate. There were fears Kenya could relapse into another wave of violence (ICG, 2013). In our

opinion, these claims were alarmist considering that the outcome of the 2013 election was peaceful and the police reform process under the grand-coalition, though inadequate, had impacted positively on the conduct of police in the 2013 elections (AU Commission, 2013).

Police reform did not solve the ethnic arithmetic in Kenya's security sector. Kibaki's loyalists mainly from Mount Kenya region, continued to be perceived to dominate the leadership of the security sector, and this remained one of the stickiest points of contestation under the power-sharing arrangement, as key appointments in the security sector including the police remained as they were during Kibaki's first term (Hornsby, 2012).⁴⁹⁷

There was the perception, especially from general public and civil society groups, that political elite in PNU backpedalled on the reform process, while those in ODM who were not satisfied with the power arrangement mobilised against the party's leadership and gravitated towards PNU. This resulted in even a more complex environment for police reform that may not have been considered at the very initial stages. As seen in the macro-meso-micro relationship framework in Chapter four, the nature of national politics had a direct influence on the local grassroots politics, meaning complex local politics for police reforms.

Police reform process was undertaken with the 2013 general elections in mind. It was a cautious process with both sides of the coalition supporting reforms only to the extent that it did not favour political opponents after the 2013 elections. Indeed Kibaki's side of the coalition, which was perceived to have transformed into Jubilee Alliance, won the elections. There was the perception from Coalition for Restoration of Democracy (CORD) that the Jubilee Alliance had the state security machinery on its side, and supported the Jubilee Alliance though this could not be verified by observer mission reports.

⁴⁹⁷ Members of Kalenjin community, President Moi's ethnic group dominated the entire security forces during his reign. They were however to become the greatest casualties in President Kibaki's purge of the security forces. Most of those retired opted to join politics to rally their tribes against Kikuyu community.

The implementation of devolution, which was a product of power-sharing arrangement, invariably impacted on the implementation of police reform. Whilst the two processes were independent and expected to progress separately, this was not the case in practice. There were no clear guidelines on dual implementation of the two processes. The pace of implementation depended on the prevailing political circumstances during and after the expiry of the coalition government. Under the grand-coalition government, police reform received traction as implementation of devolution would begin after the 2013 general elections. Upon the expiry of the term of the coalition government, the devolution debate became top of government agenda thus pushing police reform to the periphery.

Post-2013 period was characterized by heightened debate on the sharing of power and resources between the national and county governments through devolution. CORD positioned itself as the champion of devolution. This posturing forced Jubilee to focus more on devolution with little attention on police reform. The impact was run-away insecurity. The fluctuation in 'devolution-police reform' implementation prioritization was to a large extent determined by the politics of the day. The Jubilee administration focused on devolution that gave political mileage, but refused to cede security function to the counties, as demanded by CORD and the council of governors. Though governors had different political inclinations, they found consensus in demanding for devolution of some security functions to address insecurity in their respective regions.

Despite the constitution providing for involvement of civilian authorities in policing at the local level, the emergence of new elites at the county level (in the form governors) prevented the Jubilee administration from ceding some policing functions to the county level as demanded by CORD and the governors. With policing powers, the narrative was that the governors would challenge the authority of the national government. These however remained conjectures as no study had empirically determined the kind of relationship that would emerge if some policing functions were to be

devolved. However, the little literature on Kenya's devolution⁴⁹⁸ remains divorced from police reform implementation.⁴⁹⁹ Though narrow in scope, this PhD has attempted to fill this gap in chapter five and six.

7.2.4 Police Reform Impacts on Policing and Security for Local Communities

Efficacy of SSR and police reform in transitional and post-conflict settings was our third thematic area. The aim here was to examine the extent to which police reform process responded to policing and security needs of the Kenyan population. Our analysis was based on the four key areas of reform namely; institutional reforms, professionalism in the police service, police image and operational preparedness of the police (GoK, 2009).

For analytic purposes, we examined public perceptions on responsiveness of reform towards policing and public safety needs based priority reform areas of Ransley Committee (GoK, 2009). However, at this point, restricting these outcomes to specific reform areas would be to suggest a causal link within the areas of reform. These outcomes were a result of complex interactions that cannot be locked to particular priority areas.

Our aim is to demonstrate that indeed these outcomes are the result of multiple interactions in the areas of reform and also to argue that the reform process, as currently implemented, still remains less responsive to policing and local security needs. This view is also held by recent studies that have investigated police reform in Kenya.⁵⁰⁰ Of all the four key areas of reform, no reform priority was perceived, in the eyes of the public, to capture the spirit of reform as developed during the agenda setting stage.

There was dominant perception that the institutions established to reform the police were still sluggish in fulfilling the mandate for which they were established (Usalama Reforms Forum, 2014b). Police corruption still remained high (EACC, 2013, Transparency International, 2014) and both

⁴⁹⁸ See for example, Ghai (2008).

⁴⁹⁹ See for instance Kabia (2013); Mutua (2014).

⁵⁰⁰ See for instance Mohamed (2013); Mutua (2014).

internal and oversight accountability mechanisms had not been fully operational (IPOA, 2014).

The failure of the institutions to deliver on their mandate was largely attributed to institutional politics. The institutions, in most cases, failed to have a shared understanding of police reform agenda.⁵⁰¹ The findings supported the thesis that there was a systemic attempt to put the office of the Inspector General under the control of the executive through the omnibus Security Laws Amendment Act (GoK, 2014).

The finding that the reform was less responsive to policing and local security also emanates from the police understanding of the reform process. Most police officers had a narrow focus of police reform. According to them, it was about their welfare and improving their operational preparedness. Missing in the dominant understanding of police reform is the ordinary public who should be beneficiaries of a reformed police. To make up for the 'unfulfilled promise of reforms' the police turned to the citizens as a source of extra income, thus aggravating the old practices-corruption and human rights abuses and which heightened tensions between members of the public and the police. The reform process did not solve this puzzle.

Though the perception within the police rank and file was that the reform was too little too late, some senior police officers at the national level perceived the police reform process to be tremendous. This disparity, demonstrated a contradiction of some sort given the overwhelming evidence that police welfare, though under consideration, was still below the police and public expectation. This illustrates the divide between the national and the local. Police officials at the national level are out of touch with the realities on the ground and apply a top-down approach to the reform implementation process that characterizes state-led process.

The executive mobilised concepts such as 'reforms, 'capacity building', and 'professionalization of the police' which dominated police reform

⁵⁰¹ Examples in this context include reform processes like vetting and police recruitment.

discourse. These were prioritized without analysing their compliance with the elite behaviour and how these would impact on security for local populations. The process paid less attention to informal systems despite findings amongst our questionnaire respondents that 80% respondents depended on informal systems as principal providers of security. Civilian oversight of the police also suffered frustrations from both the police and the public.

Whilst the study establishes that majority of the Kenyan population is aware of the police reform process and also aware of the priorities set at the national level, it also argues that the implementation was characterized by less public participation, hence the wider perception that police reform is not responsive to public security and safety needs. The end result was that the reform failed to meet public expectation and had a little impact on communities at the local level.

The public frustrations with the police reform at both the macro and the meso levels were expressed by the local populations at the micro level. The national government did not devolve policing to the county level despite pressure from the governors and the local populations. The unwillingness of the national government to devolve some security functions through county policing authorities complicated security in the light of heightened banditry and Al-Shabaab activities in northern Kenya and coastal region. These dynamics demonstrate how a nationally negotiated police reform project could end up a floundering project due to faulty implementation strategy which favours strengthening of the state at the expense of the local capacities.

Our examination of police reform process also established that in the recent past, a number of studies examining Kenya's police reform process from diverse perspectives have begun to emerge.⁵⁰² To the best of our knowledge, none of these studies has so far offered a detailed analysis of Kenya's police reform process. The studies barely scratch the surface; only examining limited aspects of the police reform process in Kenya. We

⁵⁰² See, for instance Kabia (2013); Mutua (2014); Chtalu (2014).

consider this study as the first ever detailed analysis of post-2007 police reform process in Kenya; beginning with the agenda setting, the implementation process, the politics of power-sharing through to the outcomes and impacts on the local populations. It therefore sets precedence as a major contribution to the analysis of police reform process in Kenya during the period 2008-2014.

7.3 Linking Findings about Kenya's Police Reform Process with wider SSR and Police Reform Literature

We now reflect on the findings and conclusions relating to police reform in Kenya and link them with the wider literature areas for which we contribute knowledge. The section is divided into three sub-sections under which this study directly contributes to knowledge.

7.3.1. Relationship with Literature on SSR and Police Reform in Transitional and Post-conflict Societies

Here, we focus on implications of our findings for wider SSR and police reform literature. Our emphasis is on two areas, namely; police reform agenda-setting and the implementation process within the wider SSR and police reform processes.

7.3.1.1 Agenda-Setting

Our analysis of the setting of Kenya's post-2007 police reform agenda to a large extent confirms existent literature.⁵⁰³ As Baumgartner and Jones (1991), would argue in their Punctuated Equilibrium Theory, critical periods of mobilisation sometimes lead to dramatic change in policy. And indeed, the post-election violence of 2007/08 provided that critical period of mobilisation for police reform process. According to Rauch and Van der Spuy (2006), the need for police reform in Kenya had been recognised since the return of multiparty democracy in the early 1990s. Various documents and processes including; Economic Recovery and Wealth Creation Strategy for 2003-2007, GJLOS reform process, (Kenya Police,

⁵⁰³ See Section 3.2.

2004) and Kenya Police Strategic Plan 2003-2007 and Vision 2030 (GoK, 2007), all captured the desire for police reform. However, the police reform that emerged out of these processes was haphazardly addressed and failed to achieve the intended objectives.

Police reform and wider institutional reform had been in abeyance for many years in Kenya and where police reform appeared on top of government agenda, its purpose was for political expediency. We saw this through the 'reform' in the administration police, for the partisan role it played in the infamous 2007 elections (Waki Commission, 2008, Onsarigo, 2009). The post-election violence provided the opportunity to review these earlier reform processes.

Whilst the dramatic change in the prioritisation of police reform agenda was visible, the actual implementation may not have been in tandem with police reform policy shift. Complex agenda setting processes lead to contested implementation of those agendas (Eustis, 2000). Our findings underscore these complexities of agenda setting processes and particularly emphasise the role of the president as an actor, either in the form of breaking hardliners' obstinacy for policy change, or being held captive by his handlers opposed to reform policy (Kingdon, 2002). This was the case for president Kibaki's attitude in police reform process in Kenya. As a key actor in agenda setting process, his predisposition determined the pace of agenda setting and the implementation process.⁵⁰⁴

Our finding about the role of the president in agenda setting for police reform within the context of neo-patrimonial context stimulates interesting debate between Hills (2007) and Francis (2012). Though their debate was in terms of governance of policing in Africa, our finding on the role of the president in agenda setting for police reform nevertheless clarifies their points of divergence. The two scholars have a convergence of opinion that indeed the president wields influence over the police in fairly stable transition societies, which our finding indeed supports. However, Francis

⁵⁰⁴ See Kingdon (2002).

(2012) disputes the argument by Hills (2007) that 'Africa's police are accountable to their presidents alone, and any reference to democratic forms of accountability are rarely more than tactical concessions or gestures to donors on the part of political elites' (Hills, 2007, p.403-404). We also find the assertion too strong. But we maintain that indeed the setting of police reform agenda in Kenya was to a large extent a gesture to ease of political pressure for president Kibaki.

In Kenya, the agenda was set such that the president would have minimal role in the appointment of the Inspector General. This was however short-lived there were legislative amendments to accommodate presidential preferences in the appointment.⁵⁰⁵ With the 'tyranny of numbers' that dominate politics in Kenya, the president in most of the cases has his way, which seem to emphasise that despite other competing centres of control, the president still has his way when it comes to policing and police reform.

Some SSR literature remains ambivalent in the relationship between agenda setting and implementation. Hutchful (2009) for example sees a less meaningful relationship between security sector reform agenda and implementation particularly in power-sharing context.⁵⁰⁶ Others show that security sector reform agenda which is not strong in statement and not anchored in law is unlikely to be pursued to the letter, as in the case of Zimbabwe as argued by Noyes (2013).

In Kenya, previous commissions of enquiry were never implemented as they were not anchored in law.⁵⁰⁷ Post 2007/8 police reform process avoided this pitfall through an ingenuous self-enforcing mechanism. The process that set the reform agenda, for example Waki Commission was self-enforcing and also anchored in the Constitution of Kenya (2010) thus protecting the reform process from rogue political elite.

⁵⁰⁵ GoK (2014).

⁵⁰⁶ We revisit this claim in Section 7.3.2.

⁵⁰⁷ See; Brown & Sriram (2012).

Though agenda setting literature gained dominance in the 1960's,⁵⁰⁸ the emergence in the 1990's of SSR and in particular police reform literature is yet to significantly explore this linkage despite evidence about the relationship between agenda setting and implementation process (Eustis, 2000). Focus has been on the reform processes independently, with less visible studies on police reform agenda setting processes or those linking police reform agenda-setting to the implementation process. Most studies on agenda setting process in Africa have focused on other sectors for example telecommunications (Thakur and Best, 2008), electoral reform (Norris, 2012), mass media (McCombs, 2013) amongst others. Literatures on police reform, where they exist, are short on agenda setting, but long on reform implementation.⁵⁰⁹

This thesis makes two-fold significant contributions to wider security sector reform agenda setting processes. First, we fill the gap in the in agenda setting literature for police reform process in transitional countries particularly those emerging from political crises. This we achieved within the wider context of existing agenda setting theories (Baumgartner and Jones, 1991, Kingdon, 2002) and examination of the dynamics of agenda setting processes in other sectors (Eustis, 2000, Thakur and Best, 2008). Secondly, we linked the agenda setting process with the implementation process and established that the way agendas are set determines the implementation process, which emphasizes existent literature.

7.3.1.2 Police Reform Implementation

Having explored the controversies and the debates of implementation of police reform the in Kenyan context in Section 7.2, we now relate these with the wider literature. How relevant was the implementation process of the Kenya police reform within the wider police security sector reform literature? We examine these in two phases. In Phase One; we assess the implications of our findings regarding the status of police before the 2007 post-election violence which was the locus around which this

⁵⁰⁸ See; Schattenschneider (1960); Bachrach and Baratz (1962); Cobb et al., (1976).

⁵⁰⁹ See for instance, Holm & Eide, (2000); Karanja (2013); Loh,(2010)

research revolved. In the second phase, we focus on implications of actual implementation on the wider literature on the implementation of SSR and police reform in countries emerging from crisis.

Pre-2007 Police in Kenya

Our analysis of pre-2007 police suggest that the state of police in Kenya before 2007 to a large extent is an embodiment of what the literature considers as 'crisis of policing and security sector reform' (US Justice Department, 1994, Francis, 2012). These crises include: crisis of legitimacy; crisis of identity (whose police is it and what type of police?); crisis of purpose (what primary function in relation to the people and state?); and crisis of capacity (can the police carry out its basis functions?) (Francis, 2012).

These crises are a function of the interactions of factors that have over the years shaped policing in societies in transition, and of which the trajectory of policing in Kenya fit. We find that four factors, including: colonial legacy; pursuit of national building objectives; wars and their impact on policing and impact of neo-liberal globalisation identified by Hills (2000), Rauch and Van der Spuy (2006) and further elaborated by Francis (2012) variedly influenced the police in Kenya. Whilst Kenya has not experienced large scale wars as is with post-conflict contexts, for example Rwanda and Burundi, the confluence of the other three factors define the crisis that was Kenyan policing before 2007.

Policing in Kenya has its roots in colonial legacy of repressive policing whose aim was to subdue Africans and mobilise them for labour. This did not change at independence. Constitutional amendments immediately after independence led to centralization of power under the imperial presidency that used the police to silence any form of dissent (Gimode, 2007, Ruteere and Pommerolle, 2003). Put differently, policing in Kenya was about regime policing (Neild, 2006, Pino and Wiatrowski, 2006), the focus of which was to serve the interests of the powerful political elite, rather than guarantee public security. In such cases, policing is

repressive, corrupt and do not have regard human rights. To-date, most of our respondents constructed policing based on these adversarial relationships between the state and the public.

Whilst the police had been used in electoral malfeasance in Kenya in the past, (Nowrojee and Manby, 1993, Kagwanja, 1998, Anderson and Lochery, 2008), 2007 was a turning point as it registered the highest deaths presumably caused by police in any elections. The police was more of a source of insecurity rather than security. The events had a profound negative impact on Kenya's economy. Kenya's economy suffered massive losses. The GDP nosedived from 5.4% (Kitiabi, 2011) to -0.4% (Global Finance, 2015). Trade, tourism and agriculture were hardest hit.⁵¹⁰ These were losses that would have been avoided had the police acted responsibly in 2007 general elections and therefore confirm the stated position at the beginning of the SSR debates, and even now, that of the security agencies being a source of insecurity and creating conditions not suitable for development to take place.⁵¹¹ The inexorable link between security and development cannot be overemphasised.

As Francis (2012, p.10) would put it, the period preceding 2007/08 could still be classified as state policing. Police reform process that had begun before the year 2007 had failed to address the crisis of policing and security sector reform during the period. These needed to be reviewed and the post-election violence provided the opportunity. Though Kenya had been undertaking reforms particularly after the 2002 elections, there was still a dearth of in-depth analyses of the implementation, successes of or failures of these reform initiatives. Available literatures were either for policy consumption or commentaries and to a large extent were not specific on the police. The 2007 post-election violence provided the need to focus on the police, particularly after the implication of the police in the post-election violence and the recommendations that reforms in the sector would likely lead to stability. This study filled this gap.

⁵¹⁰ See; Ksoll et al., (2009); Mueller (2008)

⁵¹¹ See Short (2000); OECD DAC (2007).

Post-2007 police reform implementation

Despite competing priorities in the post 2007/8 period, the KNDRP prioritised stopping the violence, restoring human dignity and establishing favourable environment as prerequisites for long-term police reform. This reflects the attendant views in the wider post-conflict reconstruction literature. For example, Luckham (2009) argues that when states fail or fracture, 'the first priority of state reconstruction is ending political violence and restoring minimum conditions of security' (Luckham, 2009, p.2). As such, Kenya was on the verge of collapse and stopping the violence was more immediate.

Police reform implementation was not done in isolation. It was done alongside implementation of reform in other key institutions. The reforms were state-driven and targeted statutory institutions responsible for security and their governance thereof (Hänggi, 2004).⁵¹² Preference was for a narrow or minimalist approach to the security sector. Within this approach, reform of the police and the judiciary were more dominant, while reforms in other statutory institutions remained mute. The dominance of the police reform and judicial reform however is significant because of the complementarity of the two institutions, either good or bad. As argued by (Neild, 2006), 'It is now clearly recognised that police reform requires parallel judicial reform and that it is frequently hampered, even endangered, by the slow pace or lack of judicial transformation' (Neild, 2006, p.31). To put her argument in context, we single out delays in the dispensation of justice which had been previously blamed on the police. The deliberate reform initiative to strengthen the Department of Public Prosecution (DPP) relieved the police of the prosecutorial function and so enhancing delivery of justice to the Kenyan population.

Within the wider literature, the implementation of police reform in Kenya did not assume a holistic approach (OECD DAC, 2007) often advocated for in the literature. This meant that critical constituencies in the process were ignored in the implementation process. For example, whilst

⁵¹² See Section 2.2.2 for further clarification.

governors emerged as key players in the police reform process at the county level after the 2013 elections, there was no definite framework for their participation. It is this lack of framework that put the governors on collision course with the national government in relation to police reform. Attempts by governors to be involved through the constitutional County Policing Authorities were rejected as the government failed to operationalise the authorities.

Far from targeting state institutions, the implementation excluded critical segments of the stakeholders, thus motivating the local ownership debate.⁵¹³ Whereas much of the existent literature on ownership is framed on donor-recipient dichotomy lens,⁵¹⁴ the debate in the context of Kenya had more to do with domestic ownership of the process across political elite, civil society groups, police rank-and-file, contestation between the national and county governments and the involvement of the local populations. Contestations witnessed across all the levels of analysis were about ownership of the process and each stakeholder staking a claim to the process.

Most contestations in terms of the implementation occurred at the meso level pitying the state institutions involved in the process, and in particular the National Police Service Commission, the Office of the Inspector General and the Independent Police Oversight. These contestations have been discussed in Section 4.3.2. Divergence of opinion amongst implementing agencies staking their claim in the police reform process is not a new phenomenon. From donor perspectives Brzoska (2006) attributes the 'turf wars' in the implementation of security sector reform process in transitional contexts to duplication, parallel chains of command, and fights over allocation of funds. These also apply in the context of national actors. First, there was lack of shared understanding on the mandate of the institutions, and in some cases judicial interpretations had to be sought. Secondly, the influence of political

⁵¹³ Note that the setting of the police reform agenda involved wide consultations with the public. This was however not the case with implementation.

⁵¹⁴ See; Bendix & Stanley (2008); Brzoska (2003).

motivations meant that the parochial interests of the political elite were driving the agenda of the institutions. In such instances, the contestations have a noticeable toll on efficiency and effectiveness of the reform process (Brzoska, 2006).

Closely related to the contestations in the implementation is the fact that there were instances that reform priorities were not fully implemented either because they were not explicit in statement or a case of poor implementation strategy. We exemplify this with two reform processes; merger of the two forces and vetting processes. In the case of merger of the two police forces, the Kenya Police and administration police into the National Police Service, the Ransley committee proposed the independence of the two police forces as separate entities, while the 2010 Constitution maintained the distinction of the two forces under the command of the Inspector General of the National Police Service in Article 243 of the Constitution (KCLR, 2010). This did not help clarify the divergences in the two forces. In a study that sought to determine the success factors of reform initiative of merging police force and fire services, Stinchcomb and Ordaz (2007) argued that despite grandiose ambitions, mergers of policing services have not always been met with unequivocal success. They singled out merger administrators for paying little attention to organisational culture. This was the case for Kenya. The Administration Police and Regular Police draw from parallel cultures.⁵¹⁵ While the merger exists on paper at the national level, the reform statement did not clarify how the process would be undertaken. The end result - policing at lower levels is an epitome of a deeply divided police system.

The priority to vet police officers was strong in statement. Article 7.2 of National Police Service Act (2011) states; 'All officers shall undergo vetting by the Commission to assess their suitability and competence' (KCLR, 2011a). However, the implementation was convoluted and failed to meet both public and police expectation, thus defeating the very

⁵¹⁵ For further discussions see; CHRI & KHRC (2006); Furuzawa (2011).

purpose for which it was done. Some police officers found unsuitable to serve sought protection of the courts while some civic society groups challenged the process altogether, citing vetting procedure and lack of transparency. The police resisted the process thus precipitating presidential intervention to kick-start the process (Kwayera, 2013).

The vetting lessons from Kenya demonstrate similar experiences with other transitional contexts. In Bosnia and Herzegovina (BiH), two experiences stand out: the removal of abusive police officers, and the hiring or re-appointment of judges and prosecutors (Finci, 2007, Moratti and Sabic-El-Rayess, 2009). Though these processes were conducted in post-conflict contexts,⁵¹⁶ they fit into Kenya's police and judges/magistrates vetting process. In fact the Kenyan process was designed by Alexander Mayer, a lead expert in BiH vetting process. Though the Kenyan process was still ongoing as at the time of writing, the challenges the process faced at the formative stages reduced the prospects of it achieving its objectives. Though the BiH was considered generally successful (Finci, 2007), the two contexts offer lessons that vetting of police in transitional contexts is a difficult process and which requires meticulous planning.

Though we established huge potential for non-state actors' participation in Kenya's police reform, their role was peripheral. This therefore meant that the implementation process ended up isolating the informal sector and the local populations in whose interest reforms were being undertaken. Interestingly, the Kenyan case reflected the pattern in transitional settings, where the informal actors remain the dominant security providers to nearly 80% of the population. Evidence suggests that in sub-Saharan Africa, at least 80% of justice services are delivered by non-state providers (OECD DAC, 2007, Podder, 2014). Baker (2011) reported that in two of four federal states of Nigeria, non-state policing systems were the preferred choice of security delivery 88.9% and 62.5% of the time. These compare with our findings in which nearly 80% of our questionnaire

⁵¹⁶ Kenya is not a typical case of post-conflict, but police reform lessons are similar. See Section 2.2.5.

respondents perceived that non-state actors provide them with security.⁵¹⁷ This finding reflects interesting debate with regards to responsiveness of police reform and is further developed in Section 7.3.3.

An analysis of the reform priorities spelt out by Ransley committee (GoK, 2009) suggested that the objective of post-2007 police reform was to addresses what we previously referred to as crisis in police and security sector reform.⁵¹⁸ Have these crises been addressed? Our findings suggest varied responses. On the one hand, the implementation addressed some of the crises, while at the same time continued to deepen the crises. The fact that the process was entrenched in law provides hope that though benefits are yet to be realised, the process is on course.

In terms of legitimacy, the police reform implementation did not lead to wider appeal in the eyes of the majority of the people. The service still grapples with the identity crisis of forming a unified law enforcement agency that guarantees public security and safety. The merger process caused even more confusion in terms of identity. The capacity of the police to deal with security problems still remains in question given myriad security problems in Kenya. The fact that these four crises; crisis of legitimacy; crisis of identity, crisis of purpose and crisis of capacity (Francis, 2012) have not been fully addressed emphasized the fact the police reform implementation is a complex process in transitional contexts. To expect quick fix solutions is to be overambitious especially given the fact that the process has been in existence for only five years compared to other more problematic contexts that have been undergoing for more years.

⁵¹⁷ See, Table 11:

⁵¹⁸ For crisis of policing and security sector reform, see; Francis (2012, p.10)

7.3.2. Relationship with wider Debates on SSR and Police Reform in Power-Sharing Contexts

The analysis and findings about the interrelationship between police reform process in Kenya raised a number of issues with regard to wider literature. Does the Kenyan case fit into what is known about politics of power-sharing and police reform process in other contexts? Does it challenge what we know about this relationship (and if yes in ways) and what study lessons are derived from Kenya's power-sharing politics and police reform process? In order to understand these questions, the point of departure is to understand the promise and practice⁵¹⁹ of police reform in Kenya, or security sector reform provisions (SSRPs) in the words of (Hutchful, 2009). Though the National Accord which led to Kenya's grand-coalition government made a strong pitch for institutional reforms, it was not explicit on police reform. It however created room for subsequent processes to expand and specify police reform priorities envisaged by the power-sharing agreement. In short, Kenya's power-sharing agreement was flexible enough to allow subsequent processes arising out of the agreement make considerable reference to the police, thereby making the police reform process the dominant subject of Kenya's security sector reform process.

The relationship between SSRPs in power-sharing agreements and practice thus presents a very intricate relationship with the security sector reform process. Hutchful (2009) reported significant variation in nature, scope and level of specificity of security sector reform provisions, suggesting less meaningful relationships between SSRPs in peace agreements with implementation of the reform initiatives. For example agreements with robust SSRPs e.g. El Salvador, Guatemala, Bosnia and Liberia have not translated into robust implementations, while others with no provisions e.g. Timor-Leste have had significant reform attempts. Sierra Leone had relatively weak SSRP yet followed by comprehensive

⁵¹⁹ These terminologies borrow from Ottmann and Vüllers (2014) to mean the commitments that the government and the opposition proffer during a power-sharing deal and the actual implementation (or non-implementation) of the power-sharing promises respectively.

reform, while the Mozambique's Rome Agreement did not even mention police reform but subsequent SSR focused exclusively on the police while the military attracted much attention (Hutchful, 2009). These less meaningful association between SSRPs are also reported by Ottmann and Vüllers (2014) whose focus was on post-conflict situations.

Yet in another study, Noyes (2013) reported a positive correlation between scope and depth of SSRPs and implementation in the cases of Kenya and Zimbabwe. This departs from Hutchful (2009) and Ottmann and Vüllers (2014) probably due to the fact that the Zimbabwe and Kenya cases arose out of electoral dispute. He attributes Kenya's relative success (and this study questions this claim) to the strong content of SSRP in Kenya's power-sharing agreement while also notes that Zimbabwe did not have strong SSRP in the agreement hence non implementation of security sector reform. It is in the latter point about Kenya that the findings in this research depart from Noyes (2013). Whilst the promise of police reform in Kenya's power-sharing agreement was general, in fact there is no mention of police reform in Kenya's power-sharing agreement, the practices that emerged were sector specific and strong on police reform process. In these divergent studies, how does police reform process in Kenya fit within the wider debates on the interrelationship between power-sharing politics and security sector reform?

The aforementioned studies thus cause a dilemma in concluding about the relationship between power-sharing and security sector reform processes. The Kenyan case discussed in this thesis however seem to clarify this dilemma. It establishes that indeed there exists relationship between power-sharing and police reform process. On the one hand power-sharing does facilitate the process when the political elite close ranks to work together to push the reform agenda. On the other hand, the politics of power-sharing does inhibit the police reform process particularly when the reform agenda agreed on by the political elite seem to dis-empower those who held power before power-sharing arrangement came into place. This is particularly so demonstrated by the politics of

devolution in the Kenyan context. The national government would not have the county governments have their way easily in relation to control of security at the local level.

The study challenges the assertion by Noyes (2013) that there was a strong security sector component in Kenya's power-sharing arrangement. It does argue that the security sector reform agenda was generic within the framework of institutional reform which then crystallised into the police reform agenda. It is this framework that allowed for strong and institutionalized police reform process to emerge. Had the police reform process been strong in the power-sharing agreement, it would probably not have led to strong and broad based police reform process considering the rush with which power-sharing agreements are signed ostensibly to stop the escalation of violence.

Finally, the discussions reinforce the notion that police reform is a deeply contested and highly political process and requires compromises amongst stakeholders. It does also confirm the notion that police reform process is a long term process whose dividends may not be tangible when the life of the power-sharing agreement comes to an end, but may provide a basis for which future reform endeavors would flourish. Planning for police reform process must therefore stretch beyond the life of power-sharing arrangement as the Kenyan case demonstrates.

7.3.3. Responsiveness of Police Reforms to Policing and Community Safety and Security Needs

This sub-section connects with our third thematic area and contributes to the literature on the efficacy of police and SSR in transitional and post-conflict settings. The findings here revealed the perceptions that the police reform process has not led to improved policing for most of the ordinary Kenyans.

Whilst studies have labelled police reform in some transitional contexts as successful and others failures,⁵²⁰ we hesitate to adjudge the Kenyan police reform process using this dichotomy. Loh (2010) for example considers police reform in Sierra-Leone a success story while that of DR Congo a failure. He identifies the 'success factors' present in the former and missing in the latter.⁵²¹ In assessing the Kenya context based on these factors, one gets the impression that the police reform process is far from being considered a success story. However, we argue that the success factors take long to imbue in the reform processes. The Kenyan process, which is hardly a decade, however derives prospects of 'success' in the entrenchment of the process in the constitution.

Ebo (2006) however takes a more cautious approach on the 'success' of Sierra-Leone, noting that while there is progress and positive achievements, there are some operational and governance deficits. He argues that SSR can only be largely as successful as the broader post-conflict reconstruction framework. What does this mean for Kenya? The post-2007 police reform was pegged on Agenda 4 items for long term solutions to Kenya's progress. This implies that for police reform to be seen as successful, it must be understood within the context of wider institutional reforms and enabling political context. Progress in the wider implementation of Agenda 4 items would therefore suggest progress in the police reform process.

The findings regarding perceptions about responsiveness of police reform to public security needs raise two major issues regarding the contribution this study makes to literature; the local ownership of the police reform process and the role of the (in)formal institutions in the reform process.

⁵²⁰ Loh (2010); Smith-Höhn (2011).

⁵²¹ These factors include: strong drivers for reform (in Sierra Leone the president took a personal interest in the fate of the police service); Institutionalized change management (the IG introduced change management and built up local managerial capacity); Integration of lower rank officers into the reform process (to overcome institutional resistance; to motivate; and to enable staff from all strata of the institution to become part of the reform); systematic interaction with civil society (public relations capacity combined with a deliberate media strategy are key to refurbishing the image of a formerly brutal and corrupt police force); long-term sustainability of police assistance (expensive-to-maintain equipment provided by donors misses the intended outcome).

How does the Kenya police reform process fit within the dominant realm of local ownership debates, and to what extent do these findings relate to the (in)formal sector role in the police reform process?

First we highlighted that donor-recipient dichotomy dominate local ownership debate in security sector reform processes.⁵²² This study, albeit contributing to these debates, departs from this dominant foreign-local discourse and emphasises inherent local stakeholder tensions regarding control of the police reform process. These tensions straddle all the levels of analysis considered in this thesis.

Rather than be defined by 'foreigner' and 'locals' dichotomy, police reform ownership discourse in Kenya is dominated by competition amongst Kenyans themselves in different capacities. At the national level, the political elite battled for control of the process, while at the meso level different reform institutions sought to canvas their decisions on the overall reform process. The involvement of civil society groups in the police reform process reflected some elements of donor-recipient dichotomy, this time less in terms of donors determining the course of reform, but civil society groups competing for donor resources for the reform process at the national level. In this way, civil society agendas for reform were skewed towards the interests of the donor community. At the local level however, the indigenous civil society groups remained undervalued and marginalised in the police reform process. This reflected the trend in which SSR initiatives focus on state-centric approaches (Caparini, 2010).

Within the police file-and-rank, the dominant feeling that the reform was generated from without fuelled anti-reform perception especially with regards to police oversight and vetting. Most police officers, despite being aware of the police reform process, demonstrated little competence in the implementation of the national police reform agenda. It is this feeling of exclusion amongst the police officers that Albrecht and Buur (2009) identify as prohibitive factor to success in police reform process.

⁵²² See Section 2.5.1.2.

The characteristic of ownership of police reform process in Kenya makes significant contribution to security sector reform ownership debate, looking inwards towards internal dynamics of ownership debates alongside the traditional donor perspectives of the police reform processes in countries emerging from crises.

Linking with the ownership debate is the extent to which informal actors play a role in the police reform process. Despite the burgeoning literature on the role of the informal non-state actors in the delivery of security,⁵²³ the implementation of the Kenya police reform process remained predominantly state-centric. The informal actors had limited space to participate in the process despite being actively involved in the setting of the police reform agenda. Key implementation decisions were passed down from the national government to implementing agencies and the local populations.

The role of non-state actors is not new in police and security sector reform literature. From donor point of view, the non-state is especially in the rural and poor urban areas where there is minimal access to formal state justice (Albrecht and Buur, 2009). Substantial literature also emphasise linkages between the state and the non-state (Jarstad, 2013, Schroeder and Chappuis, 2014, Boege et al., 2008, Abrahamsen and Williams, 2006). These however remain at the theoretical level, for the inclusion of the informal in the police reform implementation process remains a challenge. State-centric approaches favoured by factors such as external pressure, political environment, turf wars involving advisors, legal frameworks, limited conceptual clarity, capacity and reliance on 'outside' expertise remain dominant (Albrecht and Buur, 2009). These, as in the case of Kenya, feed into the perceptions of the ordinary populations that police reform is not responsive to public security needs.

Our findings suggested that nearly 80% of security provision is under the informal and quasi-formal sector, a finding characteristic of hybrid political

⁵²³ See Chapter 2.

orders.⁵²⁴ In a hybrid governance context, most policing is delivered by non-state actors. The state certainly cannot claim monopoly of provision of security to the entire Kenyan population. If, as argued by Baker (2011), policing that places a focus exclusively on either state or non-state institutions is unlikely to be effective, then the police reform process in Kenya is less likely to respond to policing and public security needs. Though the reform agenda for police provided for the inclusion of informal non-state actors in the process through the county policing authorities, the government, (both the grand coalition and the post-coalition) was reluctant to actualise county policing authorities that were the basis for citizen participation in security management at the local levels

The role of non-state actors however does not find favour amongst some scholars. Francis (2012) for example argues that though some countries are likely to benefit from diversity of policing (this includes non-state actors in policing), 'it no doubt undermines the state monopoly over the use of force as well as sovereignty of the state.' This, he adds 'is generally bad for peace, development and human security'. Whilst he raises valid questions on the inclusion and indeed value of non-state actors in the police reform process, he does not provide a roadmap on how the state can provide security to nearly 80% of the population, as our study and other studies establish, that depends on the non-state for security. This research establishes huge potential for the role of non-state in Kenya's police reform.

7.3.4. Reflections on Reliability of Findings in Relation to Kenya

The task of examining the implementation of an on going project under a highly contested political context presents one of the most difficult challenges for any researcher. This was the case with this research. A number of questions emerged. How do we conduct research in a dynamic, deeply contested political environment where the objects of research change faster than the research process? At what point does the

⁵²⁴ For further discussions on Hybrid political orders, see; Luckham & Kirk (2013) and Boege et al., (2008).

object of research get a closure if the research object is the implementation of an ongoing project? How do you deal with biases relating to experiences based on the researcher's professional career? Though these are questions normal to any research process, and often emerge in ethics approval process, their manifestations in this research were present and adequately addressed through the use of mixed methods approach.

First, the pragmatic approach, leaning more towards social constructivism enabled us to analyse from multiple points of views the contested concept of security and what it meant to different stakeholders. As a politically laden concept, the pragmatic approach helped us locate the priorities for police reform process in Kenya.

Secondly, triangulating different theories helped us analyse the complex phenomenon under investigation. For example, agenda setting theories, in particular Kingdon's Multiple-Streams theory proved useful in explaining how the agenda-setting process for police reform in Kenya was developed. Macro-meso-micro analysis framework proved very useful in analysing interactions and impacts of decision across all levels in policy formulation process, while Arend Lijphart's consociational democracy provided a useful platform for analysing interrelationships between political power dynamics and police reform process in countries emerging from political crisis, and under a grand-coalition governments. In short, multiple theoretical frameworks provided the means to explaining the complex processes involved in police reform process in Kenya.

Finally, mixed methods provided opportunity to gather data that would otherwise not have been gathered. A combination of different methods, including secondary data and primary data (key informant interviews, focus group discussions and questionnaire survey) helped generate rich data not possible under a single method. It also helped mitigate the inherent weaknesses associated with specific data collection methods. Thus, the mixed approach we used was useful in helping us comprehensively answer the research questions in this research.

Reflecting on the achievement made, we contend that mixed-methods approach remains an effective approach for analysing complex phenomenon.

7.4 Priorities for Future Research

This research focused on an on going police reform implementation process within the broader SSR agenda and debates. As an ongoing process, the implementation of the reform was affected by different influences that may not have been factored in the agenda-setting process. As we have argued in Chapter three, the agenda for reform was framed within the context of Kenya's 2007 political crisis. However, regional dynamics intervened to influence the police reform process in ways not anticipated during agenda-setting. The entry of Kenya Defence Forces into Somalia in October 2011 changed the security dynamics in Kenya with the Al-Shabaab 'bringing the battle home' to Kenya. Al-Shabaab attacks, both in urban and rural Kenya, have become one of the greatest security threats in Kenya that the reform process is yet to address. There is therefore potential for research on the effects of Kenya's role in regional and international security on the internal security sector reform process. This should stimulate further debates in other agenda setting for security sector reform contexts.

Secondly, state response to heightened insecurity, notably banditry, cattle rustling and threat posed by Al- Shabaab and demands for the Jubilee government to review its security priorities led to the resignation of the Inspector General and the sacking of the Interior Cabinet Secretary. It also led to the passing of Security Laws Amendment Act (2014) that sought to address legal and administrative bottlenecks in the fight against terrorism and other security challenges. How have these developments impacted on Kenya's police reform process and what lessons are drawn in police reform processes in contexts similar to Kenya? Though this thesis has highlighted some of the issues resulting from this development, the fact that this move opened another chapter in the police reform process needs to be investigated.

The research established that merger of the Kenya Police and Administration Police remains one of the stickiest issue in post-2008 police reform process in Kenya. While we have discussed the challenges of merger of the two services in Chapter 4, their trajectories seem to have a huge impact on the merger debate. There is therefore the need to investigate the extent to which the histories of the two services influence the process of merging the two services.

Whilst literature supportive of the inclusion of the informal actors in security sector reform processes is ubiquitous, no such study exists in Kenya within the context of post-2007 police reform. This is despite huge potential for the informal in enhancing police-community relations as we have established in Chapter six of this study. There is therefore need to explore, more elaborately, the role of the informal in the context of the wider community policing debate in Kenya.

Finally, whilst we have examined the relationship between decentralisation and police reform, the time period between the formal decentralisation (2013) and the period of closure for this research (2014) may not have been sufficient time-span to examine the impacts of devolution on the police reform process. Devolution was a new concept and had not been fully implemented. There is therefore scope for further research on the impacts of devolution on police reform process.

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APPENDICES

Appendix i: Participant Consent Form

Title: The Police Reform Process in Kenya, 2008-2014: A Case Study of Security Sector Reform in Societies Emerging from Crisis

I wish to participate in the above named project.

The researcher has explained to me the purpose of the above research project and I understand the following:

1. That taking part in this study will include being interviewed and audio recorded_____
2. That I am free to withdraw at any time and I will not be asked questions about why I no longer want to take part_____
3. That I may not withdraw once the thesis has been submitted for examination_____
4. That all information I provide will be dealt with in a confidential manner._____
5. I agree that the researcher may contact me on my preferred_____

Signed_____

Address_____

Telephone Number_____

Date_____

Appendix ii: Participant Information Sheet

Title: The Police Reform Process in Kenya, 2008-2014: A Case Study of Security Sector Reform in Societies Emerging from Crisis

Thank you for agreeing to participate in this study. This information sheet explains what the study is all about to help you make informed consent about participation.

This research aims at investigating the police reform process in Kenya in relation to the underlying processes, examines the contribution of local actors to the reform process and investigates the challenges and responses to deficiencies associated with Kenya's police reform process. It also explores the influence of power sharing politics on Kenya's police reform and determines the responsiveness of the reform process to policing and security needs of the Kenyan population.

The information provided by you will be used for research purpose only. It will not be used in a manner that will allow identification of your individual responses.

The study has been considered by the University of Bradford (UK) Ethics Approval Committee and has been given favourable review and also received approval from the National Commission on Science, Technology and Innovation which is legally mandated to authorise all research undertaken in Kenya.

Thank you for agreeing to take part in this Study. If you have any questions about this research at any stage do not hesitate to ask the researcher.

Nicholas Otieno Ondoro, +254721285514, +447465066062,

Email: noondoro@bradford.ac.uk

Appendix iii: Interview Guide

STUDY TITLE	The Police Reform Process in Kenya, 2008-2014: A Case Study of Security Sector Reform in Societies Emerging from Crisis
Specific Research Questions	<ul style="list-style-type: none"> i. What were the security sector reform priorities in Kenya before and after the 2007-2008 post-election violence? ii. What is the contribution of local actors to police reform and wider SSR processes in Kenya? iii. How have stakeholders responded to challenges and deficiencies of SSR in Kenya? iv. To what extent has power-sharing politics influenced police reform and wider SSR in Kenya? v. To what extent is SSR in Kenya responsive to policing and security needs of the Kenyan population?
Introduction	<ul style="list-style-type: none"> • Thank respondent for granting an interview • Assure respondent of confidentiality and anonymity • Seek to know respondent role in the organization
SSR and police reform process	<ul style="list-style-type: none"> • Please give me the overall picture of security in Kenya before and after 2008 • What do you make of the on-going police and justice reform?(Probe for how the reform agenda was set, attitudes, expectations, whether the reforms on course etc) • How does/has your organization

	<p>contribute (d) to the police reform and SSR in general?</p> <ul style="list-style-type: none"> • What are the obstacles to police reform in your own opinion? • How does your organization respond to the challenges/obstacles you have mentioned above?
Power-sharing and police reform	<ul style="list-style-type: none"> • To what extent do you think political interests(both players and processes) have influenced the police and justice reform process • Do you consider the Kenya Police to be an independent outfit? • What were the political competitions between ODM and PNU regarding police and justice reform? • Devolution: What challenges exist in devolving policing to the counties?
SSR and efficacy and responsiveness to policing	<ul style="list-style-type: none"> • Do you think the ongoing police and justice reform respond effectively to local community needs? • What do you consider to be the most important achievements of police reform, if any?(Probe respondent for reason) <p><u>For Police Officers</u></p> <ul style="list-style-type: none"> • What is your understanding of police reform? • What are your contributions towards reforming the police? • Do you think the current police reform address your needs as a police officer? • (Probe for areas of reform – accountability, professionalism, oversight and

	administrative reform?
Winding up	<ul style="list-style-type: none"> • Thank respondent and close the interview • Ask for opportunity for further clarification

Appendix iv: Questionnaire for Members of the Public (QMP)

Serial no.....

PUBLIC PERCEPTION TOWARDS SECURITY AND SSR

SECTION A:

INTRODUCTION

Interview Date: _____

Time Interview: _____ Began: _____ Ended: _____

Interview length: _____

Physical address:

Good Morning/Afternoon/Evening.

My name is------. I am conducting a study in relation to your security and safety in this neighbourhood. I am asking people for their views and opinions on security. I would be very grateful if you could answer a few questions for me. Your participation in this study is voluntary. The information you provide will remain confidential and the report will only have summary information.

Do you mind answering a few questions? YES ☐ NO ☐

SCREENER

1. What is the respondent's gender?

Male

Female

[Do not read out] Interviewer:

2. Let's start with questions about you. Do you or anyone in your immediate household work for any of the following organizations? **READ OUT**

Police..... **>TERMINATE**

Kenya Army..... **>TERMINATE**

Administration Police
>TERMINATE

Provincial Administration.....
>TERMINATE

None of the above.....
>CONTINUE

3. How old did you turn at your last birthday?

18≤24yrs **CONTINUE** ☐

25≤34 yrs **CONTINUE** ☐

35 and above **CONTINUE** ☐

4. 1. In what grade did you leave school?

1. Primary

2. Secondary

3. College

4. University

5. [Interviewer: Do not read] Don't know

SECTION B

Part 1

1. What do you consider to be the most important security issue in your neighbourhood?-----

2. What do you think the government is doing to guarantee your security and justice (Interviewer probe for responsiveness of police and justice reform to need of respondent)-----

3. Who provides your security?

(interviewer; do not read, record first mention, then record other mentions as spontaneous, finally read out those not mentioned and record those respondent recognizes as prompted)

<input type="checkbox"/> Kenya police		<input type="checkbox"/> General Service Unit	
<input type="checkbox"/> National Security Intelligence Service		<input type="checkbox"/> Criminal Investigation Department	
<input type="checkbox"/> Kenya Army		<input type="checkbox"/>	
<input type="checkbox"/> Administration police		<input type="checkbox"/>	

Part 2

1. I am now going to read a few statements about the police and I'd like you to tell me whether you strongly agree (SA), agree (A), neutral (N), disagree(D) or strongly disagree(SD)

STATEMENTS	SA	A	N	D	SD
1. There is reduced corruption in the police service.					
2. Police are more reliable these days than before					
3. Human rights abuse is still prevalent in the police service.					
4. There is strained relationship between the police and members of the public.					
5. The police are more professional in dealing with the public.					
6. The police take too long to respond to distress call by the public.					
7. There is increased public trust and confidence in police service.					
8. There are increased incidences of ethnicity and tribalism in police service.					
9. I feel more secure today than during the post-election violence.					
10. The rate of crime still remains high in my neighbourhood.					
11. The presence of the police has greatly enhanced peace and stability.					
12. The proportion of offences brought to justice still remains high.					
13. Police service is managed in a transparent manner.					
14. Public oversight of the police will improve through the ongoing reforms.					

15. There exists political interference in the police					
16. The level of dissatisfaction amongst police officers remains high					

END OF INTERVIEW

THANK RESPONDENT AND CLOSE INTERVIEW.


Appendix v: Focus Group Discussion Guide

STUDY TITLE	Security Sector Reform in Transitional Post-conflict Societies: Police Reform in Kenya after the 2007 Post-Election Violence
(15 minutes) Introduction (To help create a conducive atmosphere for the discussion. Clarify any doubts discussants might have)	<ul style="list-style-type: none"> • Ice Breaking • Outline purpose of research • Reassure participants of confidentiality
Construction of security/SSR (15 MINUTES)	<ul style="list-style-type: none"> • What is security and justice all about? • What do you consider to be your priority in terms of security and justice? • Mapping of various local actors that are involved in security and SSR
Awareness of SSR (15 MINUTES)	<ul style="list-style-type: none"> • Tell me any state security institutions you are aware of? • Which security institution do you associate reforms with? PROBE ON SECURITY SECTOR INSTITUTIONS: • Within each, probe on reform they are aware of. • Looking at the institutions we have listed here, I want us to rank them ;where the best institution comes first and so on (let participants do their own ranking) • Why have you ranked this as the first one? Probe for all.
(15 minutes) Attitudes towards police and police reform	<p>I would like us to discuss further some of the institutions you have mentioned previously</p> <ul style="list-style-type: none"> • What do you like about them? • What, if anything, do you dislike about the current state of security? • What unique thing about the police and the judiciary would you want to share with us? POSITIVE OR NEGATIVE • What do think is missing in the current police reform? • What would you like to see done to make policing effective? • Do the current changes in policing

	<p>satisfy your needs? How?</p> <ul style="list-style-type: none"> • What do you think the police should do to respond to your needs?
<p>(15 minutes) Perceptions and awareness of community policing</p>	<p>Moving on, I would now want us to focus more on the police. I would like you to tell me what comes first to your mind when I mention a word (mention attributes of the police) what comes to your mind?</p> <ul style="list-style-type: none"> • When I mention the word community policing? <p>I want us to get in to an activity. Imagine you were to walk into and out of a police station, what would you see, smell, taste, touch? Probe fully for the kind of officers they meet. Let them explain what they are dressed in ,the language they speak, the atmosphere, buildings etc</p>
<p>15 minutes Wrapping up</p>	<p>Do you have any other comments or suggestions or comments you would like to share with me regarding what we have been discussing?</p> <p>Thank participants.</p>

Appendix vi: Research Permit National Council for Science and Technology

REPUBLIC OF KENYA



NATIONAL COUNCIL FOR SCIENCE AND TECHNOLOGY

Telephone: 254-020-2213471, 2241349, 254-020-2673550
Mobile: 0713 788 787, 0735 404 245
Fax: 254-020-2213215
When replying please quote
secretary@ncst.go.ke

P.O. Box 30623-00100
NAIROBI-KENYA
Website: www.ncst.go.ke

Our Ref: **NCST/RCD/14/013/1319** Date: **29th July 2013**


Nicholas Otieno Ondoro
University of Bradford
United Kingdom.

RE: RESEARCH AUTHORIZATION

Following your application dated **16th July, 2013** for authority to carry out research on ***"Security Sector Reform in Transitional Post Conflict Societies: Police Reform in Kenya after the 2007 Post-Election Violence."*** I am pleased to inform you that you have been authorized to undertake research in **Nairobi and Kisumu County** for a period ending **31st January, 2014**.

You are advised to report to **the Inspector General of Police, Kenya Police Service** before embarking on the research project.

On completion of the research, you are expected to submit **two hard copies and one soft copy in pdf** of the research report/thesis to our office.





DR. M. K. RUGUTT, PhD, HSC.
DEPUTY COUNCIL SECRETARY

Copy to:

The Inspector General of Police
Kenya Police Service.

"The National Council for Science and Technology is Committed to the Promotion of Science and Technology for National Development"

Appendix vii: Research Clearance-Office of the Inspector General

**OFFICE OF THE INSPECTOR GENERAL
NATIONAL POLICE SERVICE
NAIROBI – KENYA**

Telegraphic Address: "IG, NPS"
Telephone: Nairobi 020-2221969
When replying please quote Ref.
No. and Date

Jogoo House "A"
P O Box 44249-00100
NAIROBI

Ref. No. NPS/IG/SEC/2/1/35 VOL. I/26 21st August, 2013


Ms. Grace Kaindi, MBS, ndc (K)
Deputy Inspector General,
Kenya Police Service,
P.O. Box 30083,
NAIROBI

RESEARCH CLEARANCE – NICHOLAS OTIENO ONDORO

The above named who is Doctoral Candidate at the School of Social and International Studies, University of Bradford United Kingdom has been granted permission by the Inspector General of Police to conduct his PhD Research within the Kenya Police Service in the areas of Police reforms including wider security sector reform process, relationship between Police reforms and politics and on going reforms to policing and public security needs.

He wishes to interview selected police officers in Kisumu and Nairobi counties.

Kindly facilitate him to carry out his research.


PETER E. EREGAE, MBS, OGW, 'ndc' (K)
FOR: INSPECTOR GENERAL
NATIONAL POLICE SERVICE

c.c. Mr. Nicholas Otieno Ondoro,
P.O. Box 62730 – 00200,
NAIROBI - Please report to the office of Deputy Inspector General Kenya Police Service at Vigilance House for assistance.

Appendix viii: Research Clearance-Kisumu County

KENYA POLICE SERVICE

E-MAIL: kisumucpc@gmail.com
When replying please quote
REF:SECPOL2/1/35/5



COUNTY POLICE HEADQUARTERS
P O BOX 800-40100
KISUMU
Date: 22nd October, 2013

TO OCPD KISUMU CENTRAL

SUBJECT: RESEARCH AUTHORIZATION
MR NICHOLAS ONDORO.

Reference is made to Inspector General's letter NPS/IG/SEC/2/1/35/VOL1/26 of 21.8.2013 on the above matter.

The above is a student at University of Bradford United kingdom and he is undertaking research program on security sector reform-police reform in kenya after 2008 PEV.The inspector general has approved his request to interview selected police officers in nairobi and Kisumu.

Urgently facilitate him conduct his research work.


David Kimeli
County police commander
Kisumu

Cc
NICHOLAS OTIENO ONDORO
P.O BOX 62730
NAIROBI

Appendix ix: Nvivo Project Summary Report

11/06/2015 21:36					
Project Summary					
Fieldwork data					
11/06/2015 21:36					
Hierarchical Name	Item Type	Created By Username	Created On	Modified By Username	Modified On
Created By:	noondoro				
Created On:	22/11/2013 21:34				
Last Modified By:	noondoro				
	12/05/2015 00:12				
Externals					
Extracts					
Extracts\\Coding Summary By Node Extract	Extract	noondoro	22/12/2013 12:20	noondoro	22/12/2013 12:20
Extracts\\Coding Summary By Source Extract	Extract	noondoro	22/12/2013 12:20	noondoro	22/12/2013 12:20
Extracts\\Node Classification Summary Extract	Extract	noondoro	22/12/2013 12:20	noondoro	22/12/2013 12:20
Extracts\\Node Structure Extract	Extract	noondoro	22/12/2013 12:20	noondoro	22/12/2013 12:20
Extracts\\Node Summary Extract	Extract	noondoro	22/12/2013 12:20	noondoro	22/12/2013 12:20
Extracts\\Project Summary Extract	Extract	noondoro	22/12/2013 12:20	noondoro	22/12/2013 12:20
Extracts\\Source Classification Summary Extract	Extract	noondoro	22/12/2013 12:20	noondoro	22/12/2013 12:20
Extracts\\Source Summary Extract	Extract	noondoro	22/12/2013 12:20	noondoro	22/12/2013 12:20
Framework Matrices					
Internals					
Internals\\CSO1	Document	noondoro	26/11/2013 20:48	noondoro	19/03/2015 14:28
Internals\\CSO2	Document	noondoro	14/12/2013 18:16	noondoro	19/03/2015 14:31
Internals\\CSO3	Document	noondoro	09/01/2014 20:22	noondoro	19/03/2015 14:30
Internals\\CSO5	Document	admin	23/12/2013 12:23	noondoro	19/03/2015 14:49
Internals\\CSO6	Document	noondoro	22/01/2014 21:33	noondoro	19/03/2015 14:28
Internals\\CSO7	Document	noondoro	20/01/2014 22:34	noondoro	19/03/2015 14:29

Reports\Project Summary Report			Page 1 of 5		
11/06/2015 21:36					
Hierarchical Name	Item Type	Created By	Created On	Modified By	Modified On
Internals\FGD1	Audio	noondoro	14/08/2014 18:26	noondoro	21/03/2015 14:50
Internals\FGD2	Audio	noondoro	15/08/2014 13:58	noondoro	19/03/2015 14:26
Internals\FGD3	Audio	noondoro	15/08/2014 16:45	noondoro	19/03/2015 14:27
Internals\K-Int1	Document	noondoro	27/12/2013 14:39	noondoro	19/03/2015 14:47
Internals\K-Int2	Document	noondoro	18/12/2013 00:16	noondoro	19/03/2015 14:47
Internals\K-Int6	Document	admin	22/12/2013 12:32	noondoro	19/03/2015 14:45
Internals\MP1	Document	noondoro	20/02/2014 15:13	noondoro	19/03/2015 14:46
Internals\MP2	Audio	noondoro	14/08/2014 13:44	noondoro	19/03/2015 14:49
Internals\Twitter ~ Search - #policevetting	Dataset	noondoro	20/02/2014 16:05	noondoro	20/02/2014 16:05
Models					
Models\New Models					
Models\New Models\Post 2008 Reform Process	Model	noondoro	20/04/2014 14:34	PhD Stuff	04/03/2015 07:05
Node Classifications					
Nodes					
Nodes\Agenda setting process	Node	noondoro	25/11/2013 21:38	noondoro	14/08/2014 16:37
Nodes\Agenda setting process\Post-2007 reform priorities	Node	noondoro	24/11/2013 13:41	noondoro	11/05/2015 23:03
Nodes\Agenda setting process\Pre-2007 police reform priorities	Node	noondoro	24/11/2013 13:40	noondoro	11/05/2015 22:58
Nodes\Amongst the public	Node	noondoro	12/12/2013 23:03	noondoro	02/05/2014 20:50
Nodes\Community policing	Node	noondoro	26/11/2013 21:02	noondoro	04/11/2014 14:40
Nodes\Contribution of local actors to police reform and wider SSR processes in Kenya	Node	noondoro	24/11/2013 13:42	noondoro	11/05/2015 17:53
Nodes\Impacts on policing and local communities	Node	noondoro	24/11/2013 13:48	noondoro	04/11/2014 19:06
Nodes\Macro level analysis	Node	noondoro	27/04/2014 02:36	noondoro	27/04/2014 02:36
Nodes\Macro level analysis\Nyumba Kumi	Node	noondoro	23/01/2014 13:14	noondoro	23/01/2014 20:38
Nodes\Meso level analysis	Node	noondoro	27/04/2014 02:39	noondoro	02/05/2014 20:50
Nodes\Meso level analysis\Civil societies and police reform	Node	noondoro	24/11/2013 13:49	noondoro	25/01/2014 22:03
Nodes\Meso level analysis\Justice reform	Node	noondoro	12/12/2013 22:48	noondoro	23/01/2014 12:58
Nodes\Meso level analysis\National Police Service	Node	noondoro	27/12/2013 15:28	noondoro	23/01/2014 13:22
Nodes\Meso level analysis\National Police Service Commission	Node	noondoro	13/01/2014 19:56	noondoro	23/01/2014 12:58
Nodes\Meso level analysis\National security policy	Node	noondoro	13/12/2013 21:56	noondoro	23/01/2014 12:58

Nodes\Meso level analysis\Police oversight	Node	noondoro	25/11/2013 19:51	noondoro	23/01/2014 12:58
Nodes\Meso level analysis\The amendments	Node	noondoro	25/11/2013 19:52	noondoro	23/01/2014 12:58
Nodes\Micro level analysis	Node	noondoro	27/04/2014 02:40	noondoro	02/05/2014 20:50
Nodes\Micro level analysis\Devolving security policing functions	Node	noondoro	13/12/2013 00:14	noondoro	23/01/2014 19:48
Nodes\Micro level analysis\Police recruitment	Node	noondoro	23/01/2014 13:10	noondoro	23/01/2014 13:10
Nodes\Micro level analysis\Police welfare	Node	noondoro	12/12/2013 23:50	noondoro	23/01/2014 14:27
Nodes\Micro level analysis\The police command and the ensuing debates	Node	noondoro	25/11/2013 19:50	noondoro	11/05/2015 14:34
Nodes\Micro level analysis\The vetting process	Node	noondoro	25/11/2013 19:49	noondoro	11/05/2015 13:53
Nodes\Politics and reform	Node	noondoro	24/11/2013 13:50	noondoro	11/05/2015 17:54
Nodes\Politics and reform\Devolution	Node	noondoro	05/08/2014 23:05	noondoro	06/08/2014 00:08
Nodes\Politics and reform\Devolution at national level	Node	noondoro	08/09/2014 14:13	noondoro	08/09/2014 15:37
Nodes\Politics and reform\Devolution politics at County level	Node	noondoro	08/09/2014 14:14	noondoro	08/09/2014 14:14
Nodes\Politics and reform\Grand Coalition	Node	noondoro	05/08/2014 23:04	noondoro	11/05/2015 22:58
Nodes\Public participation	Node	noondoro	24/11/2013 13:50	noondoro	02/05/2014 20:50
Nodes\Reform priorities	Node	noondoro	24/11/2013 13:40	noondoro	21/01/2014 15:08
Nodes\Reform priorities\Challenges to the reform process	Node	noondoro	24/11/2013 13:45	noondoro	23/01/2014 20:03
Nodes\Reform priorities\Challenges to the reform process\Absence of National Security Policy	Node	noondoro	14/12/2013 18:20	noondoro	11/05/2015 23:16
Nodes\Reform priorities\Challenges to the reform process\Absence of National Security Policy\Lack of operating standards procedure	Node	noondoro	14/12/2013 19:46	noondoro	21/01/2014 15:09
Nodes\Reform priorities\Challenges to the reform process\Civil society response	Node	noondoro	12/12/2013 23:57	noondoro	11/05/2015 23:16
Nodes\Reform priorities\Challenges to the reform process\Corruption	Node	noondoro	13/12/2013 00:09	noondoro	21/01/2014 15:09
Nodes\Reform priorities\Challenges to the reform process\Institutional bottlenecks	Node	noondoro	26/01/2014 20:24	noondoro	26/01/2014 20:25
Nodes\Reform priorities\Challenges to the reform process\Insufficient resources	Node	noondoro	12/12/2013 23:02	noondoro	21/01/2014 15:09
Nodes\Reform priorities\Challenges to the reform process\Interpretation problem	Node	noondoro	14/12/2013 19:49	noondoro	26/01/2014 20:24
Nodes\Reform priorities\Challenges to the reform process\Police community tensions	Node	noondoro	12/12/2013 23:05	noondoro	23/01/2014 20:39

Nodes\Reform priorities\Challenges to the reform process\Police culture	Node	noondoro	13/12/2013 00:04	noondoro	11/05/2015 23:16
Nodes\Reform priorities\Challenges to the reform process\Political goodwill	Node	noondoro	23/01/2014 14:22	noondoro	11/05/2015 23:15
Nodes\Reform priorities\Challenges to the reform process\Political goodwill\Merger challenges	Node	noondoro	23/01/2014 13:58	noondoro	23/01/2014 19:52
Nodes\Reform priorities\Challenges to the reform process\Problem of transition	Node	noondoro	13/12/2013 00:07	noondoro	21/01/2014 15:07
Nodes\Reform priorities\Challenges to the reform process>Youth crisis	Node	noondoro	23/01/2014 14:19	noondoro	23/01/2014 20:43
Nodes\Responding to the challenges	Node	noondoro	24/11/2013 13:45	noondoro	21/01/2014 15:08
Nodes\Responding to the challenges\Civil society response	Node	noondoro	24/11/2013 13:52	noondoro	23/01/2014 13:18
Nodes\Responding to the challenges\Institutional response	Node	noondoro	24/11/2013 13:52	noondoro	18/12/2013 17:55
Nodes\Responding to the challenges\Public response	Node	noondoro	24/11/2013 13:53	noondoro	21/01/2014 15:08
Queries					
Queries\Trust	Query	admin	21/01/2015 08:09	admin	21/01/2015 08:09
Queries\TRust and Confidence	Query	admin	21/01/2015 08:11	admin	21/01/2015 08:11
Relationship Types					
Relationship Types\Associated	Relationship Type	noondoro	22/11/2013 21:34	noondoro	22/11/2013 21:34
Relationships					
Reports					
Reports\Coding Summary By Node Report	Report	noondoro	22/12/2013 12:20	noondoro	22/12/2013 12:20
Reports\Coding Summary By Source Report	Report	noondoro	22/12/2013 12:20	noondoro	22/12/2013 12:20
Reports\Node Classification Summary Report	Report	noondoro	22/12/2013 12:20	noondoro	22/12/2013 12:20
Reports\Node Structure Report	Report	noondoro	22/12/2013 12:20	noondoro	22/12/2013 12:20
Reports\Node Summary Report	Report	noondoro	22/12/2013 12:20	noondoro	22/12/2013 12:20
Reports\Project Summary Report	Report	noondoro	22/12/2013 12:20	noondoro	22/12/2013 12:20
Reports\Source Classification Summary Report	Report	noondoro	22/12/2013 12:20	noondoro	22/12/2013 12:20
Reports\Source Summary Report	Report	noondoro	22/12/2013 12:20	noondoro	22/12/2013 12:20
Results					
Results\Trust and confidence	Results Node	admin	21/01/2015 08:11	admin	21/01/2015 08:11
Search Folders					
Search Folders\All Nodes	Search Folder	noondoro	22/11/2013 21:34	noondoro	22/11/2013 21:34

Appendix x: Obunga Police Post



Source: Researcher 2013

KENYAN NATIONAL DIALOGUE AND RECONCILIATION
THROUGH THE MEDIATION OF H.E. KOFI A. ANNAN AND THE PANEL OF
EMINENT AFRICAN PERSONALITIES
ON THE RESOLUTION OF THE POLITICAL CRISIS
ANNOTATED AGENDA AND TIMETABLE

At the fourth session held on 1 February 2008 under the chairmanship of Mr. Kofi Annan, of the Panel of Eminent African Personalities, the Parties to the Kenyan National Dialogue and Reconciliation on the resolution of the political crisis and its root causes, namely the Government of Kenya/Party of National Unity and the Orange Democratic Movement, agreed on the following Agenda for the dialogue:

A) ANNOTATED AGENDA

**1. IMMEDIATE ACTION TO STOP VIOLENCE AND RESTORE
FUNDAMENTAL RIGHTS AND LIBERTIES**

Both Parties understand that resolving this crisis politically is a matter of immediate priority and have reiterated their commitment to finding a just and durable solution. Discussions on Agenda point 1 will be conducted to identify and agree on the modalities of implementation of immediate action aimed at:

- Stopping the wave of violence that has gripped the country since the announcement of the results of the Presidential Elections;
- Enhancing the security and protection of the population and their property;
- Restoring the respect for the sanctity of human life;
- Ensuring that the freedom of expression, press freedom and the right to peaceful assembly are upheld;

**2. IMMEDIATE MEASURES TO ADDRESS THE HUMANITARIAN CRISIS,
PROMOTE RECONCILIATION, HEALING AND RESTORATION**

Discussions will be conducted to identify and agree on the modalities of implementation of immediate measures aimed at:

- Ensuring that the assistance to the affected communities and individuals is delivered more effectively;
- Ensuring the impartial, effective and expeditious investigation of gross and systematic violations of human rights and that those found guilty are brought to justice;

- Ensuring that the processes of national healing, reconciliation and restoration start at once.

3. HOW TO OVERCOME THE CURRENT POLITICAL CRISIS

Under this Agenda item, the Parties will negotiate and agree on a solution *towards resolving the political crisis arising from the disputed presidential electoral results as well as the ensuing violence in Kenya*.

The current crisis revolves, in large measure, around the issues of power and the functioning of state institutions. Its resolution may require adjustments to the current constitutional, legal and institutional frameworks.

4. LONG-TERM ISSUES AND SOLUTIONS

Poverty, the inequitable distribution of resources and perceptions of historical injustices and exclusion on the part of segments of the Kenyan society constitute the underlying causes of the prevailing social tensions, instability and cycle of violence. Discussions under this Agenda item will be conducted to examine and proposed solutions for long-standing issues such as, *inter alia*:

- Undertaking constitutional, legal and institutional reform
- Tackling poverty and inequity, as well as combating regional development imbalances;
- Tackling unemployment, particularly among the youth;
- Consolidating national cohesion and unity;
- Undertaking a Land Reform;
- Addressing transparency, accountability and impunity

B) TIMETABLE

The Parties agreed that Agenda items 1, 2 and 3 would be resolved within a period of between 7 and 15 days from the date of commencement of the Dialogue, while Agenda item 4 would be resolved within a period of one year after the commencement of the Dialogue (launched on 28 January 2008).

Done in Nairobi, Kenya, on 1 February 2008

For the Government/PNU Delegation

For the ODM Delegation

Witnessed by

For the Panel of Eminent African Personalities

H.E. Kofi A. Annan

Chairperson